Supreme Court, U. S.
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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-432
No. 78-435
No. 78-436

UNITED STEELWORKERS OF AMERICA

and

KAISER ALUMINUM & CHEMICAL CORPORATION

and

THE UNITED STATES OF AMERICA, *Petitioners*

v.

BRIAN F. WEBER, *Respondent*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 14, 1978
CERTIORARI GRANTED DECEMBER 11, 1978

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Notation: The Opinion and Judgment of the United States Court of Appeals are in the Petition for a Writ of Certiorari, App. 1a-46a, 110a, and are reported at 563 F.2d 216 (1977). The Opinion of the United States District Court for the Eastern District of Louisiana is in the Petition for a Writ of Certiorari, App. 48a-64a, and is reported at 415 F. Supp. 761 (1976).

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APPENDIX

Docket Entries

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 76-3266

BRIAN F. WEBER, ET AL., *Plaintiffs-Appellees*

v.

KAISER ALUMINUM & CHEMICAL CORPORATION AND UNITED STEELWORKERS OF AMERICA, AFL-CIO, *Defendants-Appellants*

DATE	FILINGS—PROCEEDINGS
8/30/76	Order of the Court denying motion of appellant, Kaiser Aluminum & Chemical Corporation, for stay of injunction pending appeal
9/9/76	Order of the Court denying motion of appellant, United Steelworkers of America, for stay of injunction pending appeal
2/18/77	Order of the Court granting motion of United States and Equal Employment Opportunity Commission for leave to file brief as amicus curiae
3/16/77	Order of the Court granting motion of Anti-Defamation League of B'nai B'rith for leave to file amicus curiae brief
3/21/77	Order of the Court granting motion of Great Plains Legal Foundation for leave to file amicus curiae brief
3/28/77	Argument & Submission
3/28/77	Order of the Court granting motion on behalf of Southeastern Legal Foundation for leave to file amicus curiae brief
11/17/77	Opinion of the Court

11/17/77	Judgment of the United States District Court for the Eastern District of Louisiana affirmed
4/17/78	Opinion—Order Denying Rehearing & Rehearing En Banc
5/1/78	Order of the Court granting motion of appellant, Kaiser Aluminum & Chemical Corporation, for stay of mandate pending petition for writ of certiorari
1/11/79	Clerk's certification of the transcript

Docket Entries

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA

No. 74-3510

WEBER v. KAISER ALUMINUM & CHEMICAL CORP. and
UNITED STEELWORKERS OF AMERICA

DATE	PROCEEDINGS

12/31/74 Complaint; 2 summons issued and ORDER (JMG) that the application for preliminary injunction is set for hearing on 2-5-75 at 4 p.m. 12-31-74. ent 1-2-75

1/8/75 M.R. on summs. & Order served United Steelworkers through Barney Morel; serv. Kaiser Aluminum through J. B. Phelps, both on 1/3/75

1/8/75 Pltf's mtn. & ORDER that Michael R. Fontham is appointed counsel for Brian F. Weber & that pltf. be permitted to proceed in forma pauperis. (JMG) Ent. 1/14/75

1/14/75 ORDER to determine Class Action as per Rule 23 (c)(1), FRCP. (JMG) Ent. 1/14/75

1/24/75 Mtn. of deft. Kaiser Alum. & Chem. & ORDER that mover be granted an add'l. delay within which to file pldgs. until 2/7/75. (JMG) 1/23/75. Ent. 1/24/75

1/24/75 M.E. & ORDER that a Status Conf. be set for 2/13/75 at 9:30 A.M. (JMG) 1/23/75. Ent. 1/27/75

1/28/75 ANSWER of United Steelworkers of America, AFL-CIO to complaint

1/23/75 Mtn. of deft. Kaiser Aluminum & Chemical Corp. & ORDER that mover be granted an add'l. delay within which to file pldgs. until 2/7/75. (JMG) 1/29/75. Ent. 1/30/75

2/7/75 ANSWER of Kaiser Aluminum & Chemical Corp. to pltf's complaint

2/14/75 Pltf's Class Action Allegations.

2/25/75 M.E., Status Conf. held 2/13/75 & ORDER that a hrg. be set for 3/19/75 at 10 A.M. to determine whether this case is to be maintained as a class action; that a pre-trial conf. is set for 3/19/75 at 9:30 A.M.; that trial is set for 4/4/75. (JMG) 2/13/75. Ent. 2/26/75

3/4/75 M.E. & ORDER that the trial prev. set for 4/4/75 is reset for 3/31/75 at 9 A.M. (JMG) 3/3/75. Ent. 3/4/75

3/7/75 Pltf's mtn. to maintain class action; Memo; Hrg. 3/19/75 at 10 A.M.

3/10/75 Response of deft. United Steelworkers of America to Class Action Allegations

3/19/75 Approved form of notice by Order of the Court re equal employment opportunity in selection for on-the-job training programs. (JMG) Ent. 3/19/75

3/19/75 Hrg. on pltf's mtn. to maintain class action held this date & ORDER that this suit be maintained as a class action pursuant to Rule 23(b)(2), FRCP; FURTHER ORDERED that copies of the Approved Form of Notice be posted by defts. on all employees bulletin boards, etc. on or before 3/21/75. (JMG) Ent. 3/19/75

3/19/75 Response of deft. Kaiser Aluminum to pltf's class action allegations

3/19/75 Response of deft. Kaiser Aluminum to pltf's mtn. to maintain class action

3/19/75 Hrg. to determine whether to maintain a class & hrg. on pltf's mtn. to maintain a class action; these matters were heard at Pre-trial conf. on this date; all parties agreed to submit an Order, etc. (JMG) Ent. 3/20/75

3/20/75 Request for subpns. by M. R. Fontham, Esq. (3 sets issd.)

DATE PROCEEDINGS

4/1/75 TRIAL (non-jury): Testimony heard; parties to file simultaneous briefs by 5/1/75 with reply briefs due by 5/12/75, after which time this matter will be taken under SUBMISSION.

4/1/75 Deft. United Steelworkers of America, AFL-CIO mtn. for involuntary dismissal

4/1/75 Joint stipulation as to facts and exhibits attached

3/31/75 M.R. on subpns. executed as to F. H. Maurin thru wife; as to P. J. Roussel thru wife; & as to Dennis E. English pers., all on 3/24/75

5/20/76 TRO: ORDERED that defts be restrained and enjoined from enforcing the provision of the 1974 Labor Agreement between Kaiser Aluminum & Chem. Corp. and United Steelworkers of America AFL-CIO requiring that at least one minority employee shall be selected for training programs at the Gramercy, La. works for every non-minority employee that is selected for the training programs. Order expires 5/20/76. (JMG) ent 5/21/76.

6/1/76 Pltf's mtn. for re-issuance of TRO & ORDER that defts. Kaiser & United Steelworkers are restrained & enjoined from enforcing the provision of the 1974 Labor Agreement between Kaiser & United Steelworkers requiring that at least 1 minority employee shall be selected for training programs at Gramercy, La. works for every non-minority employee that is selected for the training programs. Order expires 6/13/76. (JMG) 6/3/76. Ent. 6/4/76

6/4/76 M.R. on TRO served Kaiser Alum. thru Frieda Boughton 5/24/76; served Barney Morel thru Mrs. Wegmann 5/21/76

6/17/76 COURT OPINION: Judgment will be entered in favor of pltfs. agst. defts. granting a permanent injunction restraining defts. from denying Mr. Weber & the other members of the class access to on-the-job training programs on the basis of race. (JMG) Ent. 6/17/76

6/22/76 JUDGMENT in favor of pltfs. Brian F. Weber, individually & on behalf of all other persons similarly situated, & agst. defts. Kaiser Alum. & Chem. Corp. and United Steelworkers of America AFL-CIO, granting a permanent injunction restraining defts. from denying pltfs. Weber & all other members of the class access to on-the-job training programs on the basis of race. (JMG) 6/21/76. Ent. 6/23/76

CLOSED CASE

6/29/76 Pltfs' mtn. to award reasonable attorneys fees & costs; Hrg. 8/18/76 at 10 A.M.; Memo.

7/13/76 Deft., Kaiser Aluminum's mtn. & ORDER that the deft's mtn. to suspend, pending appeal, the permanent injunction issued on 6/23/76 is DENIED. (JMG) Ent. 7/13/76

7/14/76 NOTICE OF APPEAL by deft. Kaiser Aluminum & Chemical Corp. from the final judg. entered on 6/23/76. (Notices sent to the U.S. Court of Appeals, Court Reporter, M. R. Fontham, F. W. Middleton, Jr., John C. Falkenberry & Jerry L. Gardner, Jr.)

7/14/76 Deft. United Steelworkers mtn. & ORDER that the mtn. for Stay pending Appeal be DENIED. (JMG) Ent. 7/15/76

7/14/76 NOTICE OF APPEAL by deft. United Steelworkers of America, AFL-CIO from the judg. granting a permanent injunction dated 6/21/76 (Notices sent to the U.S. Court of Appeals, Court Reporter, M. R. Fontham, F. W. Middleton, Jr., John C. Falkenberry & J. L. Gardner, Jr.)

DATE PROCEEDINGS

7/14/76 Bond for costs in the sum of $250.00 by United Steelworkers of America AFL-CIO

7/21/76 Appellant, deft. Kaiser Aluminum's designation of transcript and record on appeal

8/18/76 Hrg. on mtn. of pltfs. to award reasonable attorneys fees & costs—GRANTED; FURTHER ORDERED that the Court's Order as to attorneys fees be STAYED pending further Court action in this matter. (JMG) Ent. 8/19/76

8/19/76 Deft. Kaiser's mtn. & ORDER that the time for transmitting the record to the Ct. of Appeals is extended for an add'l. 40 das. until 10/2/76. (JMG) Ent. 8/23/76

9/1/76 ORDER (c.c.) of U.S. Court of Appeals that the mtn. of appellant, Kaiser Alum. for stay of injunction pending appeal is DENIED.

9/10/76 ORDER (c.c.) of U.S. Court of Appeals that the mtn. of appellant, United Steelworkers of America, AFL-CIO, for stay of injunction pending appeal is DENIED.

9/24/76 Court Reporter's transcript of proceedings taken in open court on 4/1/75

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

BRIAN F. WEBER, Individually and On Behalf Of All Other Persons Similarly Situated

VS.

KAISER ALUMINUM & CHEMICAL CORPORATION and UNITED STEELWORKERS OF AMERICA AFL-CIO

CIVIL ACTION No. 74-3510

COMPLAINT

1.

This is a civil action brought by Brian F. Weber, plaintiff, on his own behalf and on behalf of all other persons similarly situated, for preliminary and permanent injunctions to prevent deprivation of certain rights guaranteed to Mr. Weber and the members of the class by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) *et seq.*, and for money damages to redress the injury caused to Mr. Weber and the members of the class by the illegal and discriminatory actions of the defendants. Mr. Weber also requests on his own behalf and on behalf of the members of the class that the Court declare illegal the discriminatory actions of the defendants, who barred Mr. Weber and the members of the class from participating in on-the-job training programs solely because of their race, and that the Court order defendants to cease the use of the discriminatory selection procedure for training programs.

2.

Jurisdiction is conferred on this Court pursuant to 42 U.S.C. § 2000(e)-5(f)(3), 28 U.S.C. § 1343, and 28 U.S.C. §§ 2201 and 2202.

3.

Plaintiff, Mr. Weber, is an employee of defendant, Kaiser Aluminum & Chemical Corporation ("Kaiser") at the Gramercy, Louisiana works, and a member of United Steelworkers of America AFL-CIO ("USWA"), Local 5702. This action is brought by Mr. Weber on his own behalf and on behalf of all other employees of Kaiser at its Gramercy works who are members of USWA and who have been discriminated against in selection for on-the-job training programs at Kaiser because they are white. This suit is proper for maintenance as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class is so numerous that joinder of all members is impracticable, there are questions of law or fact common to the class, the claims or defenses of the representative parties are typical of the claims or defenses of the class, and the representative parties will fairly and adequately protect the interests of the class. The parties opposing the class have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. Questions of fact or law common to the members of the class predominate over any questions affecting only individual members.

4.

Defendant, Kaiser, is a corporation organized under the laws of the State of Delaware with its principal place of business in the State of California. Defendant, USWA, is a labor union. Kaiser is an employer in an industry affecting commerce and employs more than 15 persons. USWA is a labor organization engaged in an industry affecting commerce which procures employees for Kaiser or procures for employees opportunities to work for Kaiser at its Gramercy works, which has more than 15 members, and which is the certified representative of employees of Kaiser at the

Gramercy works pursuant to the National Labor Relations Act.

5.

On February 1, 1974, Kaiser and USWA entered into an agreement styled "1974 Labor Agreement" purporting to set forth "the basic agreement concerning rates of pay, hours of work, and conditions of employment to be observed between the parties hereto with respect to the employees covered hereby and as hereafter defined." The agreement provides in part:

> It is further agreed that the Joint Committee will specifically review the minority representation in the existing Trade, Craft and Assigned Maintenance classifications, in the plants set forth below, and, where necessary, establish certain goals and time tables in order to achieve a desired minority ratio: [Gramercy Works listed, among others]
>
> As apprentice and craft jobs are to be filled, the contractual selection criteria shall be applied in reaching such goals; at a minimum, not less than one minority employee will enter for every non-minority employee entering until the goal is reached unless at a particular time there are insufficient available qualified minority candidates . . . .
>
> • • •
>
> The term "minority" as used herein shall be as defined in EEOC reporting requirements.

The agreement also states that this and certain other provisions of the agreement are "remedial" measures adopted in response to pending litigation concerning minority and female employment.

6.

In April, 1974, Mr. Weber was employed as a lab analyst at the Gramercy Works of defendant Kaiser. A company

"bid" for on-the-job training programs in the "Instrument", "General Repairman" and "Electrician" categories was posted by defendant Kaiser. Pursuant to defendants' standard procedure, applicants were to be selected for those programs on the basis of seniority. However, a condition of the bid was that at least half of the persons selected as prospective trainees would be applicants who were members of minority groups.

7.

Mr. Weber and the members of the class applied for the training programs announced in the April, 1974 bid and were fully qualified for the programs. However, members of minority groups with less seniority than Mr. Weber and the other members of the class were selected preferentially by defendant Kaiser for these programs to meet the established quota of at least 50 per cent minority representation. Mr. Weber and the other members of the class with greater seniority than members of minority groups selected for one, two or all three of the training programs were therefore denied entry into the training programs solely on the basis of discriminatory racial criteria.

8.

Subsequent to the acceptance of applicants in these training programs, another company bid was posted for applicants for one position in another training program in the "Insulator" category. This bid barred applications by Mr. Weber or any member of the class, as the bid was specifically limited to minority employees only.

9.

The on-the-job training programs offer opportunities for employees such as Mr. Weber to enter employment positions offering a higher rate of pay than Mr. Weber or the members of the class presently enjoy. Mr. Weber now

makes $6.23 per hour; after graduation from a training program, he would receive approximately $6.70 per hour. Moreover, a position secured after completion of one of the training programs would allow the employee to work a straight day shift rather than a night shift. Furthermore, this position would allow the employee to make additional overtime wages and collect additional maintenance payments. In addition, this position would provide greater employment security. The training programs involve substantial benefits and would provide the means for job advancement for Mr. Weber and the other members of the class.

10.

The defendants have no no legitimate reason, under the law, for denying Mr. Weber and the other members of the class equal access to the training programs of defendant Kaiser. On the contrary, the discriminatory policies of defendants are arbitrary and capricious and the discrimination against Mr. Weber and the other members of the class is based entirely on race. None of the minority applicants who were selected for the training programs pursuant to the discriminatory criteria of defendants had previously been discriminated against by defendants by a denial of opportunity to enter these or other training programs, a denial of opportunity to obtain seniority, or in any other job-related fashion. The selection policies of defendants for the training programs constitute a bald attempt to advance the members of minority races in their job classifications by discriminating against members of another race who are equally qualified and possess greater seniority.

11.

The arbitrary and capricious policies of defendants constitute race discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) *et seq.*, and 42 U.S.C. § 1981. The arbitrary and capricious racial dis-

crimination of defendants constitutes a violation of the specific provisions of 42 U.S.C. § 2000(e)-2(d) relative to "training programs."

12.

Neither the State of Louisiana nor the City of New Orleans has a law prohibiting discrimination in employment on grounds of race. Mr. Weber sought redress of the grievances in this Complaint through defendants' grievance procedures, but this effort was unsuccessful. Mr. Weber filed a timely charge with the Equal Employment Opportunity Commission. On December 5, 1974, the Notice of Right to Sue Within 90 Days was filed in this Court and given the designation Sundry 416, Section "I."

WHEREFORE, plaintiff, Mr. Weber, prays for judgment as follows:

1. That this Court declare the aforementioned discriminatory actions of defendants illegal;

2. That this Court issue preliminary and permanent injunctions restraining defendants from denying Mr. Weber and the other members of the class access to on-the-job training programs on the basis of race;

3. That this Court order defendants to account to Mr. Weber and the other members of the class for the hourly wages and other benefits lost as the result of the illegal actions of defendants;

4. That defendants be ordered to pay for all costs of this proceeding, including the reasonable attorney fees incurred by Mr. Weber; and

5. That this Court grant any and all other relief that is judicially or equitably proper.

/s/ MICHAEL R. FONTHAM
Michael R. Fontham

of

STONE, PIGMAN, WALTHER,
WITTMANN & HUTCHINSON
1000 Whitney Bank Building
New Orleans, Louisiana 70130
Telephone: 581-3200
Attorneys for Plaintiffs

(Certificate of Service Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Title Omitted in Printing)

ANSWER

Comes now defendant United Steelworkers of America, AFL-CIO, and for answer to the complaint filed herein, states as follows:

1. As to the allegations of paragraph 1 of the complaint, it is true that this Court has subject matter jurisdiction over actions brought pursuant to Title VII of the Civil Rights Act of 1964, and defendant admits that this action is brought by plaintiff Weber pursuant to said statute. However, defendant denies all other allegations of said paragraph.

2. Defendant admits the allegations of paragraph 2 of the complaint.

3. As to the allegations of paragraph 3 of the complaint, it is true that plaintiff Weber is an employee of Kaiser Aluminum & Chemical Corporation at the Gramercy, Louisiana works, and that he is a member of Local 5702, United Steelworkers of America, AFL-CIO. All other allegations of said paragraph are denied.

4. As to the allegations of paragraph 4 of the complaint, it is true that this defendant is a labor organization engaged in representing employees in an industry affecting commerce and that it has more than fifteen members. Defendant is the certified collective bargaining representative for production and maintenance employees only at the Kaiser-Gramercy works. It is not true that this defendant either procures employees for Kaiser or procures for employees opportunities to work for Kaiser at its Gramercy works. Upon information and belief, defendant admits that Kaiser Aluminum & Chemical Corporation is an employer

engaged in an industry affecting commerce, that it employs more than fifteen persons, and that it is a Delaware corporation having its principal place of business in the state of California.

5. Defendant admits the allegations of paragraph 5 of the complaint.

6. Defendant admits the allegations of paragraph 6 of the complaint.

7. As to the allegations of paragraph 7 of the complaint, defendant admits that plaintiff Weber applied for the training programs as alleged in said paragraph, however, defendant is without knowledge as to Mr. Weber's qualifications for such programs, and therefore the allegation that he was fully qualified must be denied. It is true as alleged in paragraph 7 that members of minority groups with less seniority than plaintiff were selected for such training programs, however, it is not true that they were selected preferentially or for any other invidious reason. All other allegations of said paragraph are denied.

8. As to the allegations of paragraph 8 of the complaint it is true, as alleged that a bid was posted for applicants for an insulator training program, however defendant denies that the filling of this vacancy by a minority employee amounted to any discrimination against the plaintiff.

9. As to the allegations of paragraph 9 of the complaint, inasmuch as defendant has no knowledge of plaintiff's present rate of pay, defendant cannot admit such allegation, and therefore the allegation must be denied.

10. Defendant denies the allegations of paragraph 10 of the complaint.

11. Defendant denies the allegations of paragraph 11 of the complaint.

12. Defendant denies the allegations of paragraph 12 of the complaint, except that defendant admits that neither the State of Louisiana nor the City of New Orleans has a law prohibiting racial discrimination in employment.

13. Defendant denies that plaintiff is entitled to any of the relief prayed for in the complaint.

Now having answered plaintiff's complaint and each and every paragraph thereof, for further answer to said complaint defendant states as follows:

FIRST DEFENSE

The complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The complaint is barred by the applicable Statute of Limitations.

THIRD DEFENSE

The complaint fails to affirmatively allege that defendant complied with the jurisdictional prerequisites to suit contained in Title VII of the Civil Rights Act of 1964.

FOURTH DEFENSE

This action is not properly maintainable as a class action pursuant to Rule 23, Federal Rules of Civil Procedure.

FIFTH DEFENSE

Defendant denies that it has discriminated against any persons in violation of Title VII of the Civil Rights Act of 1964.

COOPER, MITCH & CRAWFORD
409 North 21st Street
Birmingham, Alabama 35203
(205) 328-9576

/s/ By JOHN C. FALKENBERRY
John C. Falkenberry

DODD, BARKER, BOUDREAUX, LAMY & GARDNER
711 Carondelet Building
New Orleans, Louisiana 70130
(504) 522-7265

/s/ By JERRY L. GARDNER, JR.
Jerry L. Gardner, Jr.

Attorneys for defendant, United Steelworkers of America, AFL-CIO

(Certificate of Service Omitted in Printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

(Title Omitted in Printing)

ANSWER OF DEFENDANT, KAISER ALUMINUM & CHEMICAL CORPORATION

Now Into Court, through undersigned counsel, comes Kaiser Aluminum & Chemical Corporation, made defendant herein, and answers plaintiff's complaint as follows:

First Defense

The complaint fails to state a claim against this defendant upon which relief can be granted.

Second Defense

This action is not properly maintainable as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

Third Defense

This defendant denies that, with regard to any of the circumstances complained of in the complaint, this defendant has discriminated against any persons in violation of Title VII of the Civil Rights Act.

Fourth Defense

1.

Answering paragraph (1) of the complaint, this defendant admits the nature of the suit and the relief demanded, but this defendant denies all of the other allegations of the said paragraph, and particularly denies plaintiff of the alleged class he purports to represent is entitled to the relief sought or that there has been any violation whatsoever of the terms of the Civil Rights Act by this defendant, and further denies that plaintiff is entitled to bring this action as a purported class action.

2.

This defendant admits the allegations of paragraph (2) of the complaint.

3.

Answering paragraph (3) of the complaint, the defendant admits that plaintiff is employed by this defendant at its Gramercy, Louisiana Works and that plaintiff is a member of Local 5702 of United Steelworkers of America, AFL-CIO, but this defendant denies all of the other allegations of the said paragraph.

4.

Answering paragraph (4) of the complaint, this defendant admits its status and domicile and that defendant, USWA, is a labor organization in an industry affecting commerce, has more than 15 members, and is the certified representative of the employees of Kaiser at the Gramercy Works, but this defendant denies all of the other allegations of the said paragraph.

5.

This defendant admits the allegations of paragraph (5) of the complaint, but, further answering said paragraph, alleges that said agreement is the best evidence of its terms and of its contents and this defendant specifically pleads all of said terms of said contract and of the "memorandum of understanding" supplemental thereto.

6.

Answering paragraph (6) of the complaint, this defendant admits that plaintiff was employed in April, 1974, as a lab analyst at defendant Gramercy Works; and defendant further admits that bids for on-the-job training program were posted for a number of crafts, including those listed by plaintiff, and further admits that bids for such training,

had the condition that at least half the persons selected, be applicants who were members of minority groups, but, this defendant denies all of the other allegations of said paragraph and alleges that said posting and said bids and the selection of trainees was conducted strictly in accordance with the procedures outlined in the 1974 Labor Agreement and in the memorandum of understanding reached thereunder.

7.

Answering paragraph (7) of the compliant, this defendant admits that plaintiff (and others) applied for selection for training programs posted and further admits that in some cases members of minority groups, with less seniority than other bidders, not members of minority groups, were selected for such training in order to comply with the terms of the 1974 Labor Agreement and the memorandum of understanding thereunder, but defendant denies all of the other allegations of the said paragraph.

8.

Answering paragraph (8) of the complaint, this defendant admits that bid was posted for applicants for one position as trainee in the category of "insulator" and that, in order to meet the requirements of the 1974 Labor Agreement and the memorandum of understanding thereunder, applicants were limited to minority employees only, but this defendant denies all of the other allegations of the said paragraph.

9.

Answering paragraph (9) of the complaint, this defendant admits that successful completion of the training programs, referred to in plaintiff's complaint, allows employee to a job classification with a higher rate of pay than the rate at which plaintiff was employed at the time bids for such training programs were posted; defendant further admits that the job classification and the situation, of one successfully completing the aforesaid training programs, is considered by many to offer desirable aspects and advantages, but defendant denies all of the other allegations of the said paragraph.

10.

This defendant denies all of the allegations of paragraph (10) of the complaint.

11.

This defendant denies all of the allegations of paragraph (11) of the complaint.

12.

Answering paragraph (12) of the complaint, this defendant admits that neither the State of Louisiana nor the City of New Orleans has a law prohibiting racial discrimination in employment; this defendant further admits that plaintiff filed a charge with the Equal Employment Opportunity Commission and that plaintiff received a "Right to Sue" letter, dated November 29, 1974, but this defendant denies all of the other allegations of the said paragraph.

WHEREFORE, defendant, Kaiser Aluminum & Chemical Corporation, prays that plaintiff's complaint be dismissed and plaintiff's demands denied at plaintiff's costs.

BY ATTORNEYS,
TAYLOR, PORTER, BROOKS & PHILLIPS

/s/ BY: F. W. MIDDLETON, JR. by VPM
F. W. Middleton, Jr.
P. O. Box 2471
Baton Rouge, La. 70821
504/387-3221, Ext. 24

Attorneys for Defendant

(Certificate of Service Omitted in Printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

(Title Omitted in Printing)

ORDER

The hearing on plaintiff's Motion to Maintain Class Action was held in Chambers at the Pretrial Conference at 9:30 A.M. on March 19, 1975.

PRESENT:

For Brian F. Weber, Individually and on behalf of all other persons similarly situated, Plaintiffs:

Michael R. Fontham, Esquire

For Kaiser Aluminum & Chemical Corporation, Defendant:

Robert J. Allen, Jr., Esquire
Frank W. Middleton, Jr., Esquire

For United Steelworkers of America AFL-CIO:
John C. Falkenberry, Esquire

On consideration of the agreement of all parties that this case should be maintained as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure on behalf of the class described below:

IT IS ORDERED that this suit be maintained as a class action pursuant to Rule 23(b)(2), Federal Rules of Civil Procedure, on behalf of the following class:

> All persons employed by Kaiser Aluminum & Chemical Corporation at its Gramercy, Louisiana works who are members of the United Steelworkers of America AFL-CIO, Local 5702, are not members of a minority group, and have applied or were eligible to apply for on-the-job training programs since February 1, 1974.

IT IS FURTHER ORDERED that copies of the Approved Form of Notice approved by the Court be posted by defendants on all employee bulletin boards at the Gramercy, Louisiana works of defendant, Kaiser Aluminum & Chemical Corporation, and at the Union Hall of Local 5702, United Steelworkers of America AFL-CIO, on or before March 21, 1975.

/s/ JACK M. GORDON
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

(Title omitted in printing)

TRIAL

BEFORE THE HONORABLE JACK M. GORDON, UNITED STATES DISTRICT COURT JUDGE, ON APRIL 1, 1975, AT 9:00 A.M.

REPORTED BY: D. TRENT THURMAN, CSR, RPR

[2]

APPEARANCES:

MICHAEL R. FONTHAM, ESQUIRE
STONE, PIGMAN, WALTHER,
WITTMAN AND HUTCHINSON
Attorneys at Law
1000 Whitney Bank Building
New Orleans, Louisiana

Counsel for Plaintiff

F. W. MIDDLETON, JR., ESQUIRE
TAYLOR, PORTER, BROOKS & PHILLIPS
Attorneys at Law
P. O. Box 2471
Baton Rouge, Louisiana

Counsel for Kaiser Aluminum &
Chemical Corporation

JOHN C. FALKENBERRY, ESQUIRE
COOPER, MITCH AND CRAWFORD
Attorneys at Law
409 North 21st Street
Birmingham, Alabama

Counsel for United Steelworkers
of America AFL-CIO

[4]

Proceedings

The Court: Be seated. Call the case, please.

The Clerk: Civil Action 74-3510, Brian F. Weber versus Kaiser Aluminum.

The Court: Counsel for the Plaintiff ready?

Mr. Fontham: Yes, Your Honor.

The Court: For the Defendants?

Mr. Middleton: Counsel for Kaiser Aluminum is ready, Your Honor.

Mr. Falkenberry: Counsel for United Steelworkers is ready, Your Honor.

The Court: Gentlemen, just so that we'll have no misunderstanding, I have looked at the Pre-Trial Order. It does not specifically reflect the fact that this is a trial on the merits of the case, rather than a trial on the request for a preliminary injunction. It's the Court's recollection that all parties did agree that this trial today would be on the merits, the request for a permanent injunction, as well.

Mr. Falkenberry: Yes, sir, that's our intention, Your Honor.

Mr. Middleton: Yes, Your Honor. Technically, if it be necessary, we can go ahead and have the trial on the preliminary injunction and stipulate that this [5] record may be complete for the permanent injunction.

The Court: If you're prepared to present all the evidence that you're ever going to present, I think the more orderly way would be to go ahead and have this on the trial on the merits.

Mr. Middleton: All right.

The Court: Do any counsel wish to invoke the rule requiring separation of witnesses?

Mr. Falkenberry: No, sir.

Mr. Middleton: No, sir.

The Court: Anyone wish to make any opening statements?

Mr. Fontham: Your Honor, we waive our opening statement.

Mr. Middleton: We waive ours, Your Honor.

I think the preliminaries have been agreed upon, and the stipulation is what we have presented to the Court.

The Court: Gentlemen, the Clerk has just asked me whether all counsel have been admitted to the Eastern District of Louisiana?

Mr. Falkenberry: No, sir. My understanding is that Mr. Gardner filed a motion to admit for purposes of this litigation. He's not here today, Your Honor, because of the change from yesterday. He met with a conflict in his schedule and because he wasn't going to try it, I don't really know of any [6] communication he actually had with your Clerk. I understand that he talked to him.

The Court: Well, I don't know that there is anything in the record, sir. Just to be sure that you're properly admitted, it could be done informally at this time. The Court will entertain a motion by one of your other counsel in this case, who are members of the Court, to allow you to appear for purposes of this action.

Mr. Falkenberry: I appreciate that, Your Honor. I'll ask Mr. Gardner to accompany this by a formal motion.

The Court: It's not necessary.

Mr. Middleton: If I may, Frank Middleton, I'm admitted, and move, for purposes of this case, that Mr. John Falkenberry of Birmingham, Alabama, be allowed to participate and temporarily admitted for purposes of this case.

The Court: So Ordered.

Mr. Falkenberry: I don't have any desire to make an opening statement.

Yesterday, I delivered a trial memorandum to your office. The Clerk's office was closed, and I don't know whether Your Honor requires or needs that to be filed formally with the Clerk, and if so, I [7] would move that it be filed in open Court.

The Court: I received a copy of it and I'll see that the original copy is filed with the Clerk.

Mr. Falkenberry: Thank you, Your Honor.

The Court: It's this Court's practice, in the past, that memoranda are not officially made parts of the record, and we do have new rules of Court, which were supposed to have been effective January 1st, 1975, but which, pending receipt from the printer, have been delayed. Under the new rules, in order to avoid a situation where we had incomplete records, we're going to provide that all memoranda be provided and filed with the Clerk in duplicate, so that one copy may go to the Judge for his work file and one copy for the record. I think it a much more complete and orderly record, to have everything there, so I'll go ahead and, on my own initiative, file your ribbon copy, so that the record will be complete with all memorandum.

All right, Mr. Fontham?

Mr. Fontham: Your Honor, prior to calling our first witness, all of the parties have a stipulation which we

would like to formally offer and introduce into the record in this case.

We have a stipulation as to the underlying [8] facts of the case. The stipulation also stipulates the authenticity and admissibility of seven documents, the 1974 labor agreement between Kaiser and the Union, a memorandum of understanding with respect to the labor agreement, the bid list on six training programs which are at issue in this lawsuit, which have occurred since the beginning of the agreement, with regard to the 50 percent minority requirement, until the present, and certain exhibits, four exhibits which are offered and introduced into evidence by Kaiser, which the Plaintiff stipulates to the authenticity of, which reflect the makeup of the craft families at Kaiser Aluminum, the minority representation and the all white representation, the trainees selected for the training program since 1974, the craft employees, and a report letter required under the agreement between Kaiser and the Union, and I would like to introduce into evidence the stipulation, Joint Exhibits 1, 2 and 3, and on behalf of Mr. Middleton, we have stipulated Kaiser Exhibits 1, 2, 3 and 4.

The Court: Have you given the stipulation an exhibit number?

Mr. Fontham: No, Your Honor, I haven't. If Your Honor please, we could mark it Joint Exhibit A.

[9] The Court: All right. Why don't you do that?

It's Ordered that Joint Exhibit A, the documents referred to, marked respectively Kaiser 1, 2, 3 and 4, and also, Joint Exhibits 1, 2 and 3, be admitted into evidence.

Mr. Fontham: Your Honor, in addition to that, we have a couple of oral stipulations which the parties have agreed to prior to the trial this morning. One is for the Court's information, and simply for purposes of the record, we would like the record to reflect that an attorney by the

name of Marian Halley, with the Equal Employment Opportunity Commission, has been in touch with all counsel in this case. She has been provided, by me, with copies of the pleadings through the Pre-Trial Order. I understand that the EEOC has some interest in this case, although it decided not to intervene prior to this trial, and that there is some possibility that the EEOC may want to get involved, either with a post-trial brief to Your Honor, or if the case is appealed, at the level of the Fifth Circuit. But all parties wanted the record to reflect that, and I believe both of you all stipulate to that, is that correct?

Mr. Middleton: Yes.

Mr. Falkenberry: Yes.

[10] The Court: The Court, of course, can't be concerned with people who aren't parties to the action. You can put it in the record, but if they wish to participate, they should have intervened.

Mr. Fontham: Secondly, the parties have agreed that with respect to any claim that I may make for attorney's fees, the underlying proof with regard to my time and efforts and so forth will be delayed until Your Honor's decision, to see whether I may have a right to that, and I'll make it by a formal motion, if Your Honor decides in favor of the Plaintiff at some future time.

The Court: I don't see how we can do otherwise. First of all, you don't know how much time you will have spent, at this time.

Mr. Fontham: We're ready to proceed.

The Court: Proceed.

Mr. Fontham: I call Brian Weber to the stand.

BRIAN F. WEBER,

after being first duly sworn, was examined and testified as follows:

Examination

[11] By Mr. Fontham:

Q. State your full name, please.
A. Brian F. Weber.
Q. What is your address?
A. 131 Cedar Street.
Q. What is your age, Mr. Weber?
A. I'm 28.
Q. What is your occupation?
A. I'm a lab analyst for Kaiser Aluminum at Gramercy, Louisiana.
Q. Are you the Plaintiff in this case?
A. I am.
Q. How long have you been employed at the Gramercy works of Kaiser Aluminum?
A. I've been there since November of 1968.
Q. During the course of your employment at Kaiser Aluminum, have you had occasion to apply for on-the-job training programs at Kaiser?
A. Yes. In April of last year, 1974.
Q. Tell the Court what occurred, please.
A. The company put bids on the boards for general repairman trainee, instrument repairman trainee, and electrician trainee. I bid on all three of these jobs.

In awarding the jobs, the company overlooked [12] me for general repair job twice.

Q. Would you explain to the Court what you mean by the "company"?
A. Okay. In awarding the jobs, the company usually goes by seniority. The seniority is a criteria for awarding promotion on job bids. The company chose to fill two of

the vacancies in the general repairman classification by members of employment at Kaiser who have less seniority than me.
Q. What was the reason for the company's decision to use persons with less seniority than you in selections for these training programs?
A. The company was using the 1974 agreement between the United Steelworkers and Kaiser Aluminum, the contract which calls for 50 percent minority—a minimum of 50 percent minority persons to be accepted into the trade and craft trainee jobs.
Q. Were the persons with less seniority than you members of minority groups?
A. Right, they were.
Q. Have you had occasion to have any familiarity with any other training programs at Kaiser?
A. In October of last year, job bids were placed on the board for insulator trainee, for carpenter trainee. I wanted to bid on the insulator trainee job and I [13] was not able to. The bid posted on the board by the company stated that this job would be filled by black employees only, so I was barred from even bidding on that job, as was members of a non-minority group at Kaiser.
Q. Now, were there any other qualifications on these bids, other than seniority and race?
A. No.
Q. Why did you bid for the on-the-job training programs in April?
A. I bid on these jobs to better myself financially. The jobs pay more when I become a full-fledged craftsman. The overtime is much better. I would make a lot more money. The benefits built into the job are greater. The time of work probably would be the day shift, 7:00 to 3:00, which is another benefit, and job security was the big reason. I had much more job security as a craftsman than any other job.

Q. Tell the Court what steps you took to seek redress after you were passed over in the training programs.

A. In April of 1974, I talked to Mr. Dennis English about the fact that I thought that the 1964 Civil Rights law was being violated.

Q. Tell us who Dennis English is.

[14] A. He's an industrial relations superintendent at Kaiser in Gramercy.

Q. Go on.

A. I talked to him about the fact that I thought the '64 Civil Rights law was being violated, insomuch as white employees, including myself, would be discriminated against in the training programs, bids that were then on the board. In April of 1974, a couple of days later, he got in touch with me and said that this was a policy and this was part of the contract and this was how it had to be done. I then filed a grievance through our grievance procedure with the Union, and it was denied, Step 3 and Step 4 in the company, and it was dropped after Step 4 because of the fact that a grievance is an alleged violation of the contract, and this was not a violation of the contract, and it was thus dropped.

I also complained through our committee members at the plant, on the EEOC committee we have at the plant, and it was discussed at an EEOC meeting at the plant site, and the company again said this was part of the contract and they didn't feel they were violating any laws.

I filed a formal complaint with the EEOC, New Orleans District Office, and that was a six month [15] waiting period, and the EEOC has six months to act on a complaint and if they don't at the end of six months, I have a right to seek legal help, which I did at the end of six months, in December. I have seeked legal help and filed suit.

Q. Did the EEOC provide you with a Right-to-Sue letter in this case?

A. They did.

Q. What did you do with that Right-to-Sue letter?

A. I have a copy of it in my briefcase.

Q. Was the original filed into the record in this case, the original of the Right-to-Sue letter was the same one that was filed in this record?

A. Right.

Q. To your knowledge, Mr. Weber, have separate black-white seniority lines ever been maintained at the Gramercy plant?

A. No, never.

Q. Now, how is the seniority requirement for these on-the-job training programs at the Gramercy plant determined?

A. By plant seniority. They're all determined by plant seniority.

Q. Would you explain briefly?

A. The date of hire—the date a person is hired into the [16] plant determines his plant seniority. The length of his service would determine his plant seniority.

Q. Are there any workers hired at the Gramercy plant that aren't covered by plant seniority?

A. No, none.

Q. Are you familiar, Mr. Weber, with the attitude of the white workers at the Gramercy works resulting from the 60 percent quota?

A. Yeah, I am.

Q. What is the basis for that familiarity?

A. I'm familiar with this because of the fact that I have been involved with the Union for several years as a trustee, as a grievance committee man, and also, I'm now presently chairman of the grievance committee. It's continuously a part of my job to deal with everybody on the plant site, all the hourly people on the plant site, in dealing with their problems in regard to any contractual violations or other problems they might have. In so doing, I talk to a majority, I guess, of the people at the plant, and I have

gotten their feelings on the subject of training programs and discrimination.

Q. How has the quota, or the 50 percent minority requirement, affected the racial attitudes of the white workers at the plant?

[17] A. Well, there is no doubt that the quota system used by the company has had a very bad effect on the white workers at the plant. The attitudes, since this training program has been put into effect, have gotten much worse, and the racial relations of the white workers toward their black counterparts, black employees at Kaiser, have progressively gotten worse because of the fact that they realize that the company and the Union have a program in effect which uses race to promote employees ahead of themselves.

Q. How has the quota affected the loyalty of the workers to Kaiser and the Union?

A. Well, probably the same way. The quota system has had a bad effect on the loyalty toward the company and the Union, and so, much of the employees feel that the company and the Union are working against them, not for them, in advancement and promotions to jobs that they might better themselves. They feel that they're being held back. I guess the general attitude among the white workers is very bad and probably gets worse. They would have gotten a lot worse, I admit, had it not been for the fact that last year, last April, I initiated this formal complaint through the EEOC and through the courts, which brought me as a flag bearer, I guess you would say, who was [18] fighting this case, and the employees at the plant were looking to me for an answer, looking to me for this court suit, to see how things would come out.

Q. You mean, you think this mollified them to some extent?

A. No doubt it has calmed down the employees at the plant a great deal, because of the fact that they know this has been challenged.

Q. How has the quota affected the workers' desire to be productive?

Mr. Falkenberry: We object to this, and I know this is a non-jury trial, but I think this is a little speculation, now.

The Court: Do you feel you can lay a better foundation, Mr. Fontham?

Mr. Fontham: I don't know that I can lay a better foundation, but I think that Mr. Weber's testimony that he's the head of the grievance committee and that he speaks to the vast majority of the workers at the plant on a daily basis is a firm foundation for this testimony. I admit, Your Honor, it's the last question I have for Mr. Weber.

The Court: Well, I mean, you haven't asked him if he knows or if he has an opinion if it's affected production and what he bases that opinion on. Perhaps the objection would be withdrawn if some [19] foundation is shown as to his knowledge of production. So far, he's talked about attitudes, which comes before the grievance committee. I'm not sure that I'm of the opinion that production, or lack thereof, is something that the grievance committee would consider.

Mr. Fontham: Perhaps I could phrase the question in a manner I really intended it, because I'm intending to ask a question about attitudes, rather than, actually, company production.

By Mr. Fontham:

Q. Mr. Weber, how has the quota affected the desire or the attitude of the workers with regard to productivity?

A. The quota system, again, has affected the attitudes of the workers towards productivity in a very bad way because of the fact that it takes away from the initiative of the individual employee to do more, to do one step

further, to do all of his job in the best way he knows how, because he knows that even no matter how well he does it, he won't be able to be promoted, because of this 50 percent minority requirement of the company. So, thus, his attitude does affect productivity in a bad way.

Mr. Fontham: Thank you very much. I have no further questions.

[20] By Mr. Middleton:

Q. Mr. Weber, do you recall whether or not there had been any prior on-the-job training programs in which you sought to participate, prior to the institution of the procedure under the 1974 agreement?

A. There were prior training programs, but I was not allowed to participate because I didn't have the training required by the company, at that time.

Q. I see. Do you recall how many jobs have been created in the training programs instituted since the 1974 agreement?

A. I think it's 13, I'm not positive.

Q. These have been subject to the 50 percent quota that you referred to?

A. Correct.

Q. So, you're talking, really, then, about just six training possibility jobs that are involved here in your discussion of employee attitudes and positions?

A. At this point, it's six. Probably be a lot more in years to come.

Q. Are these particular craft jobs, for which training programs have geen instituted, skilled jobs, to your knowledge and understanding? When one finishes the program, he's a skilled worker?

A. Right, he's a craftsman.

[21] Q. A journeyman?

A. Correct.

Q. It requires a great deal of training and experience that one cannot get in the absence of a training program of some kind?

A. Right.

Q. Prior to the institution of this program, Mr. Weber, were you familiar with how many trained craftsmen there may have been in the plant, of the black race?

A. I'm not familiar how many black employees at the plant were qualified craftsmen. There were several, maybe two or three in the carpenter classification, or insulator classification. There was one in the general repairman classification.

Q. As a matter of fact, Mr. Weber, is it not true that the blacks in these skilled crafts were very low in proportion to the general population percentage of blacks and even of the plant population of blacks?

A. Yes, sir.

Q. Would you have any explanation, from your experience as an employee of the plant and as one of the officials of the local Union, as to why that was?

A. Well, the fact that, I guess, nationwide, more so in our general area of Gramercy, there weren't many blacks who were qualified, who were trained to become [22] craftsmen.

Q. The blacks, in general, just haven't had an opportunity heretofore to participate in training or educational programs to qualify for these skills, is that not correct, sir?

A. Because of their lack of training and schooling, yes.

Q. Well, for anyone to be qualified, he has to have had schooling or training or some sort of an apprenticeship program, is that not right?

A. No. Are you saying that if a man goes to trade school for three years, that's not an apprenticeship program?

Q. Either an extended educational program or an extended apprenticeship program, one or the other, sometimes both?

A. Sure.

Q. Those have not been available to the black population, in general, in the area in which the plant's located, is that my understanding?

A. Yes, sir, but not only to black employees.

Q. So that as a result, the maintenance and crafts forces at the Kaiser plant and most of the other plants in this area are substantially white, predominantly white, are they not?

A. They are.

[23] Q. As I understand it, you feel that these craft jobs are quite desirable, both on an economic and on a job security basis?

A. They are.

Q. By job security, you mean just job security with your plant employer, or the ability to obtain employment elsewhere in the community?

A. When I talk about job security, I mean to a large degree with my employer, and to some degree if I should get laid off in years to come, that I can find employment elsewhere.

Q. Is it your understanding, as the spokesman for your group of people, that, in general, these jobs are sought after and considered highly desirable for the reasons you have mentioned?

A. Right, they are.

Q. Mr. Weber, if you don't mind my asking this of a more personal nature, what is your present hourly rate?

A. 6.3 to 7. Six dollars and——

Q. Would you know approximately how much you were paid in wages by Kaiser?

A. About $17,000.00, in that vicinity.

Q. Are you considered one of the more highly paid employees at the plant, or are you about the middle?

A. I guess I would be considered average. I have known some [24] to make less. I have known maintenance people

who got hired at Kaiser after me who make more than twice than I did.

Q. Has it been your observation, Mr. Weber, that most of the maintenance and craft people at Kaiser have been directly hired for work in such crafts after being qualified in those crafts outside the plant?

A. Right, they have been.

Q. Actually, there have been very few that have had the training in the plant, or while Kaiser employees?

A. Yes, that's right.

Q. Is that the explanation of what you said a while ago, that a lot of the craft people making more than you have actually been hired since you, they're junior to you in seniority?

A. Some of them are making more, yes.

Q. Mr. Weber, you described your protest of the quota system that was followed on the bids in 1974. Is it your understanding that this was what was required by the labor agreement, or was this something done by the company on its own, or arbitrarily?

A. This is something done in accordance with the 1974 labor agreement.

Q. I just want to be sure we were squared away. You're not saying that the agreement wasn't followed, but the [25] fact that the agreement was followed is the basis for your complaint?

A. Yes, sir.

Mr. Middleton: I have no further questions.

By Mr. Falkenberry:

Q. Mr. Weber, let me question you about your direct testimony to the effect that racial attitudes are affected in productivity. I understand that to be your testimony?

A. Yes.

Q. Now, you have only been chairman of the grievance committee for about three weeks, isn't that right?

A. That's right.

Q. You were a member of the committee prior to that time?

A. I have been, yes.

Q. And as a member of the committee, you work only in your department, or in your area of the plant, you don't cover the entire bargain unit until you get to be chairman, did you?

A. As chairman of the grievance committee, I covered the entire bargain unit. However, as an officer of the union and as a trustee and as a member of the negotiating committee in 1974, I did talk with people around the whole plant.

Q. You were a member of the local Union negotiating committee [26] in 1974?

A. I was.

Q. Did you raise any objection to the quota system during negotiations in 1974?

A. The 1974 negotiations, which I was a member of that committee, were held locally. It did not include this section. This was done in New York, which I was not a member.

Q. You mean, you just negotiated the local supplement?

A. Yes.

Q. Which is not the master agreement that is the exhibit here?

A. Yes, sir.

Q. Those are the particular rules that relate only to the Gramercy works?

A. Right.

Q. You did not participate in the negotiation of the master agreement?

A. I did not.

Q. Now, back to your testimony about attitudes, is that a "No. 1" lapel pin that you have got on your coat this morning?

A. It is.

Q. Would you tell the Judge what that is and what that represents, please, sir?

[27] A. The company has initiated a program for safety, to make Kaiser number one, Kaiser Gramercy number one, and it's a reminder that one man can make a difference to get one million man hours of safe work.

Q. Kaiser gives those buttons to the employees, is that correct?

A. I don't know that many employees have these buttons, but some of us do.

Q. It's a promotional sort of thing, to promote Kaiser?

A. Promote the safety program at Kaiser.

Q. Also, it represents the suggestion that Kaiser wants to be number one in the entire aluminum industry, isn't that correct?

A. I guess that's it. The wants of Kaiser, that's not the reason I have the "No. 1" button on.

Q. Now, you told Mr. Middleton that you never applied for on-the-job training programs prior to April 1974, is that correct?

A. That's right.

Q. And just so I'll understand, tell me why you did not bid for such a program?

A. Previous to 1974, the requirements of the company were that a person must have five years of heavy industrial experience, or at some time, a combination of three years of industrial experience, or some training, [28] which I had none of.

Q. And that experience requirement was removed prior to the posting of the 1974 bids?

A. Correct.

Q. Now, assuming, Mr. Weber, that you were completely satisfied with what the contract said and that the April 1974 bids had been filled by seniority only, by straight seniority, you would not have been the successful bidder for any of the training programs for which you bid, would you?

A. I don't know that. I was a bidder, and people with less seniority than me were awarded the jobs. Now, when

a man bids on the job, and the company comes to the people according to seniority, normally, and asks them if they want the job or not, they have the right to turn it down, which some of the men did, and a couple of people could have turned it down and it could have got to me.

Q. Assuming enough people had turned it down, it would have gotten to you, but if it had gone on straight seniority, it would have gone through a great number of people declining the job?

A. I would say a great number, 15 to 20.

Q. Have you seen the bid roster that's an exhibit in this case?

[29] A. No, I haven't.

Q. Mr. Weber, there have been no black craftsmen, to speak of, until very recently at the Gramercy works, isn't that correct?

A. No, I don't believe that's correct, because the carpenter craft, there has been for some years.

Q. There have been some black carpenters. About how many general repairmen would you estimate there are at the Gramercy works?

A. I would say in the vicinity of 180.

Q. Even given the training program and the filling of the April '74 bids, that there are very few blacks?

A. About four, I think.

Q. And that's also true with some of the other crafts, is it not?

A. Correct.

Q. Since you came to work for Kaiser—when was it, back in '68?

A. Right.

Q. Was there always some sort of training program available?

A. Yeah, there was a training program available.

Q. Has it grown since then, or are there more training opportunities available since, say, April of '74, than there were prior to that time?

A. Yes, there are.

[30] Q. Do you know of any blacks who were afforded on-the-job training opportunities by Kaiser until the last few years?

A. Not off-hand, but in the carpenter classification, there were some blacks working there and a lot of those people in that classification were trained on the job. However, I can't say for sure that any blacks were trained on the job, no.

Q. Most of the people you know about who were trained on the job prior to the last few years were white employees, weren't they?

A. There were very few trained on the job, but those were white.

Q. But the ones who were trained were, by and large, white, would that be correct?

A. Yes, because they had the experience to get to the training program.

Q. One other thing, Mr. Weber. I don't want to leave a misconception in the record. You described for the Court the contractual procedure as to how you bid for transfer opportunities. You said you bid by plant seniority?

A. Right.

Q. Now, we both know that's true, but there is also departmental seniority?

[31] A. There is departmental seniority, but not for transfer.

Q. Transfer is performed, under the contract, based on a competing employee's relative employment date, or plant seniority?

A. That's right.

Q. But once they successfully transfer, they receive a new seniority date, which is the date of their transfer into their new department, isn't that correct?

A. They keep the old seniority—plant seniority date, but also, they receive a——

Q. They keep their plant date for some purposes, but they pick up a new departmental date for promotion?

A. That's right.

Q. And that's for all purposes, other than transfer or layoff?

A. For reduction within the department, yeah.

Q. So, an employee transferring uses his plant seniority, really, only to get to where he's going, and once he gets there, he uses a new departmental date and he becomes a junior man on the date of his transfer into the new department, doesn't he?

A. Right.

Mr. Falkenberry: That's all.

The Court: Mr. Weber, I would just like to clarify a couple of points. You indicated that during 1974, [32] there were three jobs which were available for bids. One was general repairman, one was insulator trainee——

The Witness: The three that come up in April were general repairman, instrument repairman.

The Court: You didn't say insulator?

The Witness: Later on, in October, that barred whites from bidding.

The Court: The only two that you bid were general repairman and insulator trainee?

The Witness: No, sir, the jobs that I bid on in April were all three, general repairman, instrument repairman, and electrician, and I was barred from bidding on the insulator trainee job.

The Court: All right. So, your testimony is, then, that in April of 1974, you bid on instrument repairman, general repairman, and electrician?

The Witness: Yes, sir.

The Court: And that you were rejected from all three of those?

The Witness: Just only the general repairman, had I enough seniority to obtain it. I was by-passed in that job.

The Court: I see. In other words, with regards to instrument repairman and electrician, you would not [33] have had enough seniority to obtain those, whether you were by-passed or not?

The Witness: That's right.

The Court: Do you know of your own knowledge whether other members of the class—are you familiar with the class in this case?

The Witness: Yes, Your Honor. Other members of the class were by-passed for ali these jobs.

The Court: In other words, let me make sure you understand that, so that the record may be complete, and that is, all persons employed by Kaiser Aluminum & Chemical Corporation at its Gramercy, Louisiana, works, who are members of the United Steelworkers of America AFL-CIO, who were not members of a minority group, and who have applied for or were eligible to apply for on-the-job training programs since February 1st, 1974. So, to your knowledge, then, you're telling me that other members of that class applied for the instrument repairman and the electrician job and were rejected?

The Witness: Yes, Your Honor.

The Court: Because of their race, in your opinion?

The Witness: That's right, yes, and the October bid for the insulator trainee, all members of the class were barred from bidding, were discriminated against [34] because of their race.

The Court: All right. Now, sir you have indicated that you are familiar with the attitudes of the other employees because of your participation on the grievance committee and the Union activities and as, presently, chairman of the grievance committee, and you have testified concerning the attitude of white employees. Do you have any opinion or knowledge of the attitudes of minority group employees?

The Witness: Well, the attitude of the white employees toward the black employees, because of this program, I feel, have caused a bad reaction. It worsened the racial relations between the white and the black. The black employees of the plant know that the white employees feel that they're being discriminated against because of their race, and I'm sure that the black employees' attitude toward the whites is not as good because of the fact that the white employees attitude toward the black——

The Court: Can you give me any specific instances of friction, or incidents that might have occurred, on which you base that opinion as to the white attitudes or the black attitudes or both?

The Witness: Well, there have been a couple of words pass that didn't get out of hand, that was solved [35] right away. There was at least once instance that a black and white employee got in an argument, where a knife was present. I don't know that it was particularly because of the training program, but it did occur since the training program went into effect. Like I say, a lot of the racial problems that could have occurred, didn't occur, because of the fact that most everybody knows that I'm challenging this through the court.

The Court: Gentlemen, maybe you can simplify it. Do some of the documents in evidence indicate the total percentages of minority group employees and non-minority group employees of the plant?

Mr. Fontham: Your Honor, I think we have stipulated the minority make-up in the crafts. We have stipulated who was accepted and who had more seniority and who had less. I'm not sure that we stipulated the overall percentage make-up, but I believe, Your Honor, that the evidence will establish that it's just under 15 percent minority, plant wide, and that since 1969, the overall hiring has been on almost a 50/50 basis at the gate. Previous to 1969, the plant make-up was 10 or 11 percent minority, something like that. Is that an accurate statement?

Mr. Middleton: That's substantially correct.

[36] The Court: You have heard what your counsel has said?

The Witness: Yes, Your Honor.

The Court: And what's been agreed to by Mr. Middleton. Would you agree with those percentages?

The Witness: Yes, I would. Correct.

The Court: Now, when you had based your opinions concerning attitudes, are they based on the overall employees in the plant, or on employees in the crafts?

The Witness: No. It's based on the overall attitude of the entire plant.

The Court: I presume, based on what you have said, and you have given as reasons, that once the white employees are in the crafts, they would have no particular reason to be concerned about this program, this quota program?

The Witness: Well, there is some resentment, I guess, within the crafts, that they are training people who are not following the traditional seniority way of filling the job.

The Court: But their personal security is not being affected?

The Witness: Not as of yet, no.

The Court: They shouldn't be losing any incentive to do a good job, as you have indicated you have done, for example, because I think you testified that one [37] incentive to produce, to do a good job, was lessened because he didn't feel he would be promoted on merit, but, rather, on race. What I'm trying to find out is whether the same would apply to people who are already in the craft, and, therefore, not likely to be discriminated against?

The Witness: Well, although they do possess this security you talk about, I think they do still feel some resentment toward the company because of the fact that always at Gramercy, we have never had a discriminatory policy, racial discrimination. This is something that's being initiated, and we don't know what the future holds in store. If this can be done, which wasn't dreamed of a couple of years ago, then maybe the security of these workers would be in jeopardy in the next couple of years, should a layoff occur.

The Court: Has this resentment been solely to the company, or to the Union as well?

The Witness: Toward the Union, yes.

The Court: Those are all the questions I have.

If I have suggested questions that counsel who have already cross-examined wish to pursue, you may do so.

By Mr. Fontham:

[38] Q. Mr. Weber, these prior training programs that involved just a few people being trained by Kaiser prior to 1974, all of those training programs had as a prerequisite an experience requirement in that job area?

A. That's right.

Q. Now, not only did most black employees not have that experience requirement, you didn't have it either, did you?

A. That's right, and a lot of my fellow workers. They were, thus, not able to go into that training program, at that time.

Mr. Fontham: Thank you very much.

By Mr. Middleton:

Q. I think all our questions are being directed to that same general point.

Mr. Weber, let me clarify one thing. Under the new program, you and many, many others like you were able to bid on on-the-job training, whereas, under all prior programs, you had been unable to, is that not correct.

A. That's correct.

Q. So, under this new program that came in with a quota attached, you now have opportunities you didn't have under any previous job training program, is that not [39] correct?

A. That's correct.

Q. Both on the past training programs and the present, is there any selectivity on the basis of merit or past record?

A. On the past training program prior to 1974?

Q. Yes, other than experience, excuse me, in the craft?

A. No. It was done completely by seniority after that.

Q. You didn't mean to imply that prior to the present program, a man who had worked hard and showed initiative could be selected for a craft program, as compared with another employee who had not shown sufficient initiative and interest in the company?

A. No, prior to this 1974 program, the employee would have been selected, if he had the experience, only by seniority.

Q. And under the new program, as I understand it, the experience qualification has been done away with; all you

need is the interest in bidding on the job and to have the seniority, subject, of course, to the 50 percent quota, is that right?

A. That's right.

Q. How hard a guy may work or how good a record he has doesn't have anything to do with it, now, or in the past, either, does it?

[40] A. No.

Q. And promotion, then, into this kind of job is not dependent upon how hard a man works or not?

A. No.

Mr. Middleton: Thank you, sir.

By Mr. Falkenberry:

Q. Mr. Weber, you told the Judge about some animosity on behalf of various employees toward the Union, as well as to the company. Let me ask you, Mr. Weber, whether you have heard about what is called the Steel Decree, the Consent Steel Decree, in the steel industry?

A. I have heard about it very, very lightly. I didn't go into it, because we were tied up with our own.

Q. Have you made any attempts, as an officer of your local Union, to ascertain what the attitude and what the official position of your International Union is regarding seniority modifications and equal employment opportunities?

A. Well, first off, I think I know the official attitude, since the contract was signed by the International Union.

Q. I don't mean just in your industry, I mean the general policy of the International towards equal employment opportunity?

[41] A. I know it to some extent.

Q. Would you agree with me that it is a policy of the United Steelworkers of America to end all prior discrimination in employment, or the present effects of any prior discrimination?

A. I believe I can agree with that.

Q. Would you say, from what you know about the Steel Decree, that that was the policy that was behind the Consent Decree in the steel industry, was to correct prior inequities?

A. I think that was the objective.

Q. Is it also your understanding that with respect to the Kaiser contract, that paragraph 4 in the attachment to the master agreement is designed toward that end, also, as a remedial goal?

A. Well, partly. It's not by any means doing away with discrimination. It's starting discrimination. However, I guess to some extent, the company might think it would be.

Q. You have friends who work at other plants in the general New Orleans-Gramercy-Baton Rough area?

A. Some.

Q. Do you know anybody who works at the Crown Zellerback Paper Company?

A. No, I don't.

[42] Q. Do you know they have had a decree up there for a long time that modified their seniority?

A. I don't know much about Crown Zellerback. I have heard about it.

Q. Do you know, personally, of any plants where there have been a court decree modifying seniority?

A. No, I can't think of any that I'm familiar with.

Q. So, you couldn't tell me about, you know, the attitudes of friends of yours who work at plants where there were court decrees that changed seniority, you just wouldn't know about that?

A. I wouldn't.

Mr. Falkenberry: That's all, Your Honor, thank you.

The Court: Thank you, Mr. Weber. You may step down.

Mr. Fontham: Your Honor, Plaintiff calls Mr. F. H. Moran.

F. H. MORAN,

after being first duly sworn, was examined and testified as follows:

Examination

By Mr. Fontham:

[43] Q. State your name, please.
A. Fortune H. Moran.
Q. What is your address?
A. West Second, in Reserve.
Q. What is your age?
A. Forty-four.
Q. What is your occupation?
A. Plant service spare.
Q. Where are you employed?
A. At Kaiser, Gramercy.
Q. How long have you been employed at the Kaiser works at Gramercy?
A. It was 16 years on the 26th of March.
Q. Have you ever had occasion to apply for on-the-job training programs at Kaiser?
A. Yes.
Q. Tell the Court, please, what occurred with regard to these on-the-job training programs.
A. Well, in April of last year, they had three jobs that came up. There was general repairman, instrument repairman, and electrician, and I bid on all three of them. Then, I was passed, you know, on account of my race. I wasn't awarded any of the jobs.
Q. You had approximately 16 years' seniority?
A. Yes, sir.
[44] Q. Do you know what the approximate seniority of the black employees who were selected in preference to you was?

A. I wouldn't be sure, but it's either five or four years, that I think.
Q. Have you had occasion to apply or to be interested in any other training programs since then?
A. Well, in October of last year, insulator training came up and it was for colored only. It was on a bid for colored only.
Q. Would you have wanted to apply for that one if you had had the opportunity?
A. Yes, sir.
Q. Why did you bid for the on-the-job training programs?
A. Well, you have a lot more security in that job. You have a lot more overtime, and most of their work is days. Well, when you complete the training program, you have a little better insurance and vacations, and the pay would be better when you complete the training programs, and sick leave and all this, and like when you complete it, it would help your retirement, too, because the job pay would be higher, financially.
Q. To your knowledge, Mr. Moran, have separate black-white seniority lines, prior to this, ever been maintained at the Gramercy plant?
[45] A. Not to my knowledge.
Q. To your knowledge, have blacks ever been discriminated against at the Gramercy plant?
A. Not to my knowledge, no.
Q. Just to let me make sure I understand, with regard to the April 1974 bids, do I understand that blacks with less seniority than you were selected in all three training programs?
A. You're saying after the April bids?
Q. In April of '74, you applied for three training programs?
A. Yes, sir.
Q. In all three of those, were blacks with less seniority than you selected?

A. As far as I know.

Mr. Fontham: Thank you very much.

Your Honor, we have no further questions, at this time.

By Mr. Middleton:

Q. Mr. Moran, have you ever had an opportunity to consider applying for any previous on-the-job training programs at Kaiser?

A. I think previously I had bid on some training programs, but you had to have some experience, and I had bid on them, but I never did receive them.

Q. You weren't considered as qualified, due to the lack of [46] experience in those particular trades?

A. Yes, sir.

Q. Was the 1974 program, on which you bid and about which you have testified, the first on-the-job training program that you had had an opportunity to bid on that did not require advanced qualification in the way of experience or training?

A. I think so, yes.

Q. So, you had, in 1974, an opportunity to be eligible and bid on something that you never been eligible to bid on before?

A. Yes, sir.

Q. And that's true of a lot of fellows at the plant, the white fellows that bid, is it not?

A. Yes.

Q. In fact, there was a huge number of bidders on each of these jobs, were there not?

A. I'm not sure how many they had. I just know I bid on it.

They had some under me that bid on it, too.

Q. The point I make, this '74 program gave you and a bunch of other people an opportunity you had not previously had?

A. Yes, sir.

Q. Your complaint is not that a program is put in, but, rather, blacks junior to you ended up with the job?

[47] A. Yes, sir.

Q. You don't know, to your knowledge, whether you would have gotten any of these had they been handled on a pure seniority basis?

A. I don't know. I never was told whether I would have gotten one or not.

Mr. Middleton: Thank you very much.

By Mr. Falkenberry:

Q. Mr. Moran, you said that blacks had not been discriminated against at the Gramercy works. Would you tell me, please, sir, what the basis for you making that statement is?

A. Well, I think that they, you know, bid on everything else before, and they gotten all the rest of the jobs before, that I know of.

Q. Prior to this time, had any blacks gotten general repairman jobs?

A. Not by the training program.

Q. There weren't any black craftsmen, either, were there, general repairman hired from the street?

A. I think they may have one now, but how long he started—

Q. You may have one now, and if so, that would be one, plus the trainees, out of some 180, according to Mr. Weber, would that be correct?

A. I guess so.

[48] Q. It is a fact, isn't it, Mr. Moran, that there are some jobs at the Gramercy works that have never been held by black employees?

A. Until how long ago, you mean?

Q. Until the training program.

A. I would say yeah.

Q. There are still jobs, now, that have not been filled by black employees, is that correct?

A. Yes, sir.

Q. So, when you say that blacks have not been discriminated against, would it be fair to say that that's your feeling about it, rather than being any factual statement?

A. Well, it would be my feeling to what I know. You know, I don't really know it for sure, you know.

Mr. Falkenberry: Thank you, sir.

Mr. Fontham: I have no questions, Your Honor.

The Court: Thank you, sir. You may step down.

(Witness excused.)

Mr. Fontham: Your Honor, that and the stipulations completes the Plaintiff's case, although I understand there are certain witnesses that are going to be called by the Defendant.

The Court: Let's take a recess, gentlemen, now, for 15 minutes.

[49] (Recess.)

The Court: Be seated.

Plaintiff having rested, are there any motions to be made at this time?

Mr. Falkenberry: Yes, Your Honor. The Defendant, United Steelworkers, would, at this time, offer a motion for involuntary dismissal.

The Court: Let the record reflect that I have been handed a written motion for involuntary dismissal, requesting such relief on the ground, based on the facts and law, that Plaintiffs have shown no right to relief. The Court will reserve judgment on the motion and Order it be filed in the record.

Do the Defendants wish to proceed?

Mr. Middleton: Yes, sir.

Call Mr. English.

DENNIS E. ENGLISH,

after being first duly sworn, was examined and testified as follows:

Examination

By Mr. Middleton:

[50] Q. Your name is Dennis E. English?

A. Yes, sir.

Q. And where are you employed, Mr. English?

A. Kaiser Aluminum & Chemical Company, in Gramercy.

Q. Where do you live?

A. Baton Rouge, 12252 Brookshire Avenue.

Q. How long have you been employed by Kaiser Aluminum?

A. Just over eight years.

Q. How long have you been officially connected with the Gramercy plant?

A. Close to three and a half years.

Q. What is your present position there?

A. I'm the industrial relations superintendent.

Q. Your job as industrial relations superintendent, is it involved with supervision of all employee and personnel matters at the Gramercy plant?

A. Yes, it does. My department has the responsibility for labor relations, which concerns, basically, union matters, personnel relations, safety, security, medical, all the employee-related functions.

Q. Could you state, please, sir, what, in general, is the percentage of minority employees in the plant population?

A. As of December of '74, 14.8 percent of the hourly workers, the bargaining unit, were minority.

[51] Q. How does that compare with the general population in the vicinity of the plant, in the Parrish of St. John's and St. James?

A. By the figures that we get from the Department of Employment Security, the two parrishes, St. James and St. John's, on which our plant kind of splits that parrish line, there are about 46 percent minority and 54 percent white.

Q. You are, I assume, acquainted with the 1974 labor agreement and, particularly, that portion of it that deals with on-the-job training and includes a one-for-one ratio of minority and women to white males?

A. I'm quite familiar. It's a 50/50 program.

Q. Now, was any particular objective or target data included within the 1974 labor agreement or its subsidiary, Memorandum of Understanding, adopted for Gramercy?

A. Yeah. What that agreement tries to do, at Gramercy, and we're one of many plants, we have found, once again using the available statistics, that there are about 39 percent minority employees in the available work force in the two parrishes around us. As a result of that, we, in line with that agreement, are striving to obtain, at some future date, a 39 percent minority population in each of the craft families, as is spelled out in that agreement.

[52] Q. The percentage of blacks in the available work force, then, was adopted as the objective, or the goal or standard, for this new training program at Gramercy, is that right?

A. Yes.

Q. Mr. English, was this new program under the '74 agreement restricted just to Kaiser, Gramercy?

A. No. That program was agreed to by Kaiser Aluminum & Chemical Corporation and the United Steelworkers, which represent some 15 plants under the master agreement that is negotiated about three years on a national basis.

Q. Is there any difference in the application of this new program, as between various Kaiser plants, to your knowledge?

A. The application of the program should be similar, because the agreement affects us all. However, Gramercy is different from the other plants, in that, because we are from a different geographical region, we have a different minority work force availability, and I think, as the memorandum will show, Gramercy is in an area which has the highest minority work force available, that being the 39 percent figure.

Q. I gather that in some of the other plants, the objective percentage that the program seeks to achieve is [53] something less than 39 percent?

A. I think it's all over the map. Some plants, as little as one or two percent, based upon their location in the country.

Q. Now, in addition to the Kaiser master agreement that, I believe you said covered some 15 different Kaiser plants, do you know of your own knowledge whether this same program for skilled craft training on a minority ratio basis is followed anywhere else in the aluminum industry?

A. To my knowledge, the other big aluminum companies in the aluminum industry, Reynolds, etcetera, have the same agreement, so that it is an industry-wide agreement versus just a Kaiser agreement, or a Gramercy, Louisiana, agreement.

Q. You're saying, then, that the particular program under attack here, that is, the bidding for on-the-job training into crafts without previous experience on the basis of seniority, but on a one-for-one ratio, is an industry-wide procedure?

A. Yes, sir.

Q. Does the same union, the United Steelworkers, represent all of the particular plants and industry-wide employee coverage that you're speaking of?

A. I think the Steelworkers represent plants in each of

[54] those companies, Kaiser, Alcoa and Reynolds. Other unions, I think, represent some of the employees.

Q. Mr. English, in your experience at Gramercy, what did you find had been the relative make-up of the skilled crafts in maintenance, so far as their racial composition?

A. Prior to our '74 agreement, which has now added seven more blacks to the craft classification, prior to that agreement, we had about a two to two and a half percent minority craft percentage in the total craft area. We had a total of five.

Q. You had a total of five, you were saying?

A. Prior to this program, we had a total of five minority employees in all of our crafts, combined.

Q. That's five out of approximately how many, total?

A. I think it's somewhere around 290, at that time.

Q. Do you know why there was this small percentage of blacks within these craft groups?

A. I think, basically, it's because of the unavailability of trained, educated and qualified minorities. I know that Kaiser, Gramercy is not the only company in Baton Rouge or up and down the river that is facing the same dilemma of trying to get minorities into their work force, into the specialized craft jobs, especially.

[55] Q. Have any particular efforts been made by you, or to your knowledge, to secure any minority employees in craft categories?

A. We have done several things. For the past several years, because of what Kaiser as a company wants to do, because of what we have agreed to with the Union, and because of annual compliance reviews with the Government, we have set goals, timetables, to try to achieve a larger percentage of minorities in the crafts. We have advertised in Baton Rouge and New Orleans newspapers. We advertise in minority-only newspapers when craft vacancies become available. We keep separate craft application files, so that any time the craft vacancies comes up, our first thing, we will go to that craft file and we will try to locate qualified

black craftsmen, and we always look for the blacks before the whites, and it's quite difficult, because they aren't available.

Q. Why, then, after such a program, did you have only five or six blacks in the maintenance and skilled crafts, prior to the institution of the '74 agreement?

A. Once again, we can advertise all we want, and we can keep all the files we want, and look as hard as we can look, and they just aren't available.

Q. What do you mean by "not available"? They're all working [56] somewhere else?

A. There are very few that are trained and qualified, to begin with, and any black minority today who is qualified is working, because companies like Kaiser anywhere are hiring blacks first, or they're attempting to get blacks on the payroll.

Q. Do you know, from your own investigations into the general subject matter, why it is that there are no blacks trained and qualified, relatively speaking, in this area?

A. I can guess.

Q. No, don't guess.

You have looked into it, I assume, as part of your professional responsibilities. What do you find is the reason?

A. Most of the training for craftsmen over the years has come through the building trades. They have apprenticeship programs, whereby a candidate spends four or five years in an apprenticeship program, and he graduates as a skilled craftsman. Until just recently, blacks did not get into those building trades programs. I think that the blacks that are qualified, those that are qualified and hold jobs today, somehow got experience on their own and they went to some trade schools and got some kind of [57] education to allow them to get into the crafts.

Q. Did the nonavailability of trained blacks from the labor force, in general, have anything to do with the institution of the 1974 program for on-the-job training?

A. Well, I think it had everything to do with it. Kaiser and the Steelworkers realized that we were all receiving more and more pressure to local blacks for our craft classifications. Gramercy, Louisiana, didn't have blacks in the crafts, nor did the other 14 Kaiser-Steelworkers locations, nor did Alcoa, nor did Reynolds. I think, at that time, the officials of both Kaiser and the Steelworkers realized that something other than the ordinary, look until you find them, had to be done to get blacks into the crafts. It was a company-wide problem, and I think it was an industry-wide problem.

Q. Prior to the institution of the new program under the 1974 agreement, had there been any previous training programs that, to any extent, furnished an input of trained manpower into the crafts?

A. We had two programs that expand several years for two separate crafts. We have the craft that's been discussed, called general repairman. We have the craft, carpenter-painter. It's a combined classification. [58] There have been training programs in those two crafts.

In the carpenter-painter in 1964, through 1971, and general repairman since 1968, and then again in 1971, both of those programs, as described, required experience plus seniority for an employee to get into that program.

Q. By experience, you don't mean that he was already a qualified journeyman in these particular crafts before he could go into the training program?

A. No. In the carpenter-painter training program, we had required one year of previous experience or schooling, to the effect of one year of experience, so that it wouldn't be the effort of having to go to train an employee from scratch. We wanted some experience, realizing he didn't have it all. There was an agreement negotiated with the Union, because they wanted the craft positions given to their employees first, before we hired from the outside. So, we agreed that if an employee had some previous experience, we would train him for the balance, and then he was

paid less during his years of training, and as each six month or one year period passed in training, his wage rate would increase to some cents per hour.

Q. Were you able to fill your needs for new craft qualified [59] journeymen by such training programs as you had previously?

A. No, because we had continued, and we have continued, to hire off the street, directly from the outside, all during that period of time. I think since '64, we had 11 carpenter-painter trainees, and we had 17 general repairman trainees, from '68 through '72.

Q. Now, how does that compare with the number hired as journeymen in those categories through the front gate, if you will, or through outside sources?

A. In 1974, specifically, we hired 22 craftsmen. I think we hired 17 general repairmen, one machinist, a couple of electricians, and a number of instrument repairmen, as a general statement.

Q. Now, these new people you were able to hire off the street, that you just mentioned, were any of those blacks, incidentally?

A. One was a minority general repairman, who is the first and the only general repairman in the plant who was prior to the training program. Still, he's the only fully qualified journeyman.

Q. In the general repairman category?

A. Yes. The other 21 that we hired were all white.

Q. In selecting and hiring those people, was any effort made to seek and employ more of a higher percentage of [60] qualified blacks?

A. In each case, we advertised, we went to a minority file, we interviewed anybody who showed interest. There just isn't the availability, again, and we only hired the one general repairman.

Q. Mr. English, it is fair to say, then, that the present program instituted by the Steelworkers and the various aluminum companies, including Kaiser, was instituted as

the only known means of obtaining trained black craftsmen?

A. Well, that is the means that we selected, because we knew that something out of the ordinary had to be done.

Q. Do you know of any other means available, that you have considered, or that the companies considered, or that the Steelworkers, the Union, has considered?

A. No, I don't.

Q. Now, as part of that program, have you also opened the way for white employees who desire to go into craft training to do so, that were not previously eligible?

A. In the respect that there is no longer an experience requirement, as was discussed earlier by the previous speakers here. You had to have experience to be considered and to get into the program, and that [61] meant black and white, both. Under this current program, it's primarily a strict seniority only program. We do consider physical disability, and there was one bidder on these programs, who did not have the normal physical abilities and, therefore, he was denied entry into the program. There was one employee, also, who had seniority, who could have got into the program, a white male, who was denied entry because he had been disqualified under one of the previous programs.

Q. You mean, unsuccessfully attempted to take a previous training program?

A. Yeah. For the most part, it is seniority.

Q. Now, what's the total number of people that have entered upon training programs under the new agreements and procedures?

A. Thirteen.

Q. And of those, what is the racial composition?

A. There are seven minorities and six whites.

Q. Now, incidentally, the agreement deals, also, with females. Do you have any females in the hourly work force at the plant?

A. We have begun to hire females. We have four females in the hourly work force now.

Q. Do you have any in the craft jobs, or has anybody applied [62] for any of them?

A. Two of the females were in the plant when the first bids went on the board in April, and they did not sign the bid.

Q. Is there a separate female quota or goal?

A. There is a separate female quota in the Memorandum of Understanding, which is a part of the contract, which stipulates that five percent of the 50 percent minority is the goal that we would like to attain for female employment in the crafts.

Q. Is this new program any different from previous programs, so far as its methodology, or the usefulness of the trainees to the company during the course of their training?

A. Yeah, it's quite a bit different. When the employee comes to us now, in a training program, he, for the most part, has no training or experience or background whatsoever in mechanical or electrical ability, or whatever the training program is. For that reason, the training program, based upon the individual craft, will last either two and a half or three and a half years, that is, on-the-job training out in the field. At the same time, he gets about four hours of schooling per week by a training supervisor who oversees the training program, and at [63] the same time, he's required to take and pass International Correspondence School home studies, home courses, and these courses, in each of the programs, range, I think, from as low as 40 courses in the air condition repairman training program, to something like 66 courses in the electrical program. So, we have a combination of on-the-job training, classroom instruction, and home study.

Q. Has this program been evaluated in terms of what it may be expected to cost the company per trainee?

A. Yeah, we put a figure on that. We feel that on an

annual basis, the minimum cost is between 15 and $20,000.00 per trainee.

Q. Are you able, at this time, to have an unlimited number of trainees in any particular specialty, such that all future needs for journeymen in these crafts can be met by the present training program?

A. What we attempt to do is forecast the positive needs that we think we're going to have. We attempt to look at turnover rates, how many people will retire the next year and the year after, and the quit ratio, the death ratio, so we attempt to forecast those needs that we think we're going to have for certain. Based upon that forecast, we will then select that number of employees to be trained, knowing, of [64] course, that there has got to be an upward number of trainees that you can be training at once, because the trainees don't have the experience to get the job in the field. So, we still have to have the qualified journeymen in the field to do the work during the two or three years that he's being trained.

Q. Is there a limited ratio, you might say, of trainees to journeymen, in any one particular category, that can be considered feasible, either for operations or for training purposes, as were any one time?

A. I'm sure there is. We haven't set a limit. We haven't discussed that limit. I don't think, personally, that we're going to be looking at a group of trainees, at any time in the near future, of more than 20 trainees at once. We don't have any trainees for 1975.

Q. On the basis of your studies and projections, over the planned course of this new program, if it continues, would the objective goals, percentages, be reached very soon, in a matter of two or three years?

A. No, I think projecting out at what point we'll meet that percentage we're trying to attain, I'm guessing it could probably be a minimum of ten years, to a maximum of maybe never, depending upon our needs and our [65] turnover, and all the things I mentioned earlier.

Q. This is not, then, a drastic, sudden thing that can be all accomplished within a matter of a very few years under the 1974 agreement, to bring about a quick change in the percentages?

A. No, it's not. I think it's simply a method of trying to get started and get a program going to where we can place the minorities in the craft programs.

Mr. Middleton: I believe that's all the questions I have, at this time.

Mr. Falkenberry: If Your Honor please, I'm not sure what the Court's wishes are. I assumed I would go next.

The Court: I think it would be more orderly.

Mr. Falkenberry: I have just a few questions.

The Court: All right.

By Mr. Falkenberry:

Q. Mr. English, let me take Mr. Middleton's last question to you one step further and ask you what will happen under the master agreement, once the minority goal is reached in a particular craft family?

A. Once the goal is reached of 39 percent, or whatever the figure will be down the road, I think it's subject to change, once the goal is reached in each of the craft families, at that time, we will then revert to a ratio of what that percentage is, if it remains [66] at 39 percent and we attain 39 percent someday, we will then continue placing trainees in the program at that percentage. The idea, again, being to have a minority representation in the plant that is equal to that representation in the community work force population.

Q. Now, the original on-the-job training programs that Kaiser operated, as I understand your testimony, were begun for persons who had some prior industrial experience, is that correct?

A. Right.

Q. And seniority, in addition to experience, was the standard for selection for those O.J.T. programs?

A. Right.

Q. Did that training program result in blacks receiving training, or being selected for training programs?

A. In the carpenter-painter classification, of the 11 trainees over the 1964 to 1971 period, there were two minorities, two blacks, who got into that program.

Q. And the other training program was for general repairman?

A. There were no blacks that ever got into that program.

Q. All right. In fact, the first blacks got into the general repairman program in 1974?

A. That's right.

[67] Q. One from the gate and three through the on-the-job training bids that we have been litigating about, is that right?

A. That's right.

Q. Now, prior to the institution of the 50 percent minority requirement, the company dropped, did they not, the prior industrial experience requirement for entry into the training program?

A. Yes, we did. We used to require a five years' experience factor for hire into the journeyman top-paying, standard rate craftsman classification. We reduced that five year qualification to three years.

Q. All right. Did that result in an increase in black participation in training programs?

A. Well, that requirement was a requirement to be hired from outside the plant, not a training program requirement.

Q. Not a training program requirement?

A. This is just to be hired from outside as a skilled mechanic or whatever.

Q. All right. Has the company hired, other than in the carpenter-painter category, qualified black craftsmen from

the street, or have the blacks who are in craft jobs been selected through the training programs?

[68] A. We had, prior to 1974, five blacks in all of our crafts combined. Two of the carpenter-painters got there through the training program which I just mentioned. There were two other carpenter-painters who were hired off the street, qualified, and there was one garage mechanic who was hired off the street, qualified, and then in 1974, early in 1974, we hired a journeyman general repairman off the street.

Q. Is it true, incidentally, that most of the general repairmen who today work for Kaiser, Gramercy works, were hired off the street, and a much smaller percentage came through the training program?

A. Yeah, that's right. I think the figures show that, once again assuming a 180 members general repairman classification as of December, 17 of those came through the training program, which means that 163 came from off the street, hiring over the last 17 years.

Q. Is is correct that until 1974, the company was never able to hire a black general repairman from the street?

A. That's right.

Q. If the training program were to operate, Mr. English, as Mr. Weber suggests, that is, by using plant seniority alone, from your experience and your position at the [69] plant, can you tell the Court what the impact on black employees would be if the company and the Union simply followed plant seniority in selecting applicants for on-the-job training programs? Would there be any blacks in the program today?

A. There would be, I think, a couple. We do have some very senior black employees that were hired in and started the plant in 1957-58, but those black employees already had some pretty highly paid top jobs in the plant, and on the bids, on these six different program bids, there were some black bidders who had a lot of seniority, but for the most

part, there would be very few blacks that would get into any of the crafts for quite a while.

Mr. Falkenberry: No further questions.

By Mr. Fontham:

Q. Mr. English, with regard to the selection for on-the-job training, this seniority requirement that you have been talking about is a plant-wide requirement, plant-wide seniority, is that right?

A. That's correct.

Q. And this is seniority that applies to every laborer or employee as of the date that he's hired at the plant, is that right?

A. That's correct.

[70] Q. It's not affected by departmental seniority or job seniority, applying for on-the-job training programs?

A. No, it's not.

Q. And to your knowledge, no difference in the seniority of blacks and the seniority of whites has ever been in effect at the Gramercy plant, is that right?

A. If I understand what you're asking me, we have not had, and we don't have, a discriminatory system of seniority at the plant.

Q. Is that right?

Mr. Middleton: You have to answer out loud.

The Witness: I'm sorry.

By Mr. Fontham:

Q. Is that a correct statement?

A. That's correct. My answer was that we don't feel that we have had, or do have, a discriminatory system of seniority.

Q. With regard to the past training programs, other than the experience requirement, plant-wide seniority was the only other criterion, is that right?

A. Well, once again—

Q. Other than the physical—

A. Once again, physical limitations.

Q. But other than the physical limitations and the experience requirement, plant-wide seniority was the only [71] criterion?

A. That's right.

Q. And this was true for all of your training programs conducted at the plant?

A. Yes.

Q. Now, with respect to the new training programs that have been instituted in 1974, the Union has been asking for on-the-job training programs with no experience requirement for some time, is that correct?

A. The Union has negotiated, over the years, in an attempt to broaden the training programs in several respects, to get in the plant. They would always prefer that their people get first chance.

Q. This has been one of their goals in negotiating with you, to try to reduce the experience requirement, or to eliminate it completely, with regard to training programs?

A. Yes, it has.

Q. Also, with regard to the old training programs, Kaiser had virtually used up all the people in the plant with any experience in the crafts, is that right?

A. That is right.

Q. So, if Kaiser wanted to continue with training programs, it had to drop the experience requirement?

A. It either had to drop it to something less than the three [72] years, or go to nothing.

Q. Now, just so that we can expand the record with regard to my side of this case a little bit, with regard to the training programs that are now in effect, since February 1, 1974, all of these training programs are based on first, seniority, as a selection criterion, and the 50 percent racial requirement for minority employees; those are the two criterions, is that correct?

A. That's right. Once again, with the disability thing, physical limitations.

Q. In the selection of employees under these training programs, in order to meet the racial criteria, white applicants with greater seniority than the black applicants who were selected, were passed over, is that right?

A. That's right.

Q. One of these employees was Mr. Weber, in one of the training programs, is that right?

A. In the general repairman training program, there was a minority employee selected who had less seniority than Mr. Weber.

Q. On one occasion, with regard to the insulator training program, it was limited to black employees only, is that correct?

[73] A. That's correct.

Q. That was because there was an imbalance of one extra white in the training program, at the time, is that correct?

A. Yeah, I think so. Of course, the program was set up on a 50/50 basis, and the first three bids that were bid in April, general repairman, instrument repairman, and electrician, we had a total of nine trainee vacancies. We decided to go with five minority and four whites out of those nine. About a month later, in May, we bid for one more trainee in the air condition-mechanic classification. Keeping in line with the 50/50, we then stipulated that he would be a white only. So, it would be back on balance, 50/50. So, that was a white only vacancy. Then, in October of 1974, we expanded the training program to the carpenter-painter and insulator classifications. We took two carpenter-painters, one of each race, and once again, since the minority was the odd number, or the first of any two, we stipulated that the fifteenth trainee would, again, be black.

Q. In effect, you make a selection? When Kaiser makes a selection on these training programs, what happens is that you make, in effect, two separate lines of seniority, one is the white line of seniority, and [74] one is the black

line of seniority, and then you take the top people off each line, is that right?

A. In effect, you do that, because you skip the whites to get the blacks, if necessary.

Q. When the selection must be black to maintain the quota, you select a black applicant, no matter how many white employees have greater seniority, is that right?

A. That's right.

Q. So, you may select a black applicant with six or seven years' seniority, even though someone like Mr. Moran has been working at the plant 16 years, is that right?

A. That's correct.

Q. Now, the majority of the workers at the plant are white, is that right?

A. Well, 14.8 percent are minority. So, that makes the balance of them white.

Q. Thus, although the white workers are about 85 percent of the work force, they have to compete for only 50 percent of the openings in training programs, is that right?

A. That's correct.

Q. And black workers, comprising 15 percent of the work force, are allowed 50 percent of the training [75] programs, is that right?

A. That's correct.

Q. Now, with regard to the experience requirement that you're talking about for on-the-job training programs, this experience requirement was, really, something that you all required because it made it easier to put the job selectee right into plant work, as soon as he was hired, or as soon as he was taken into the program, is that correct?

A. Well, it required less training, to the point where he would then become a journeyman-tradesman.

Q. Now, you spoke of the figures that you received from the Louisiana Department of Employment Security with regard to what the black population of the St. James and St. John's parrishes is, and I believe you said that the

minority population in the work force is about 39 percent, is that right?

A. Correct, in those two parrishes.

Q. You did not intend to indicate, though, that the minority population of trained craftsmen is 39 percent, did you?

A. No, I did not.

Q. In fact, if your experience is any indication, the minority percentage of trained craftsmen in St. John's and St. James parrishes would be substantially [76] smaller than 39 percent, is that not right?

A. It sure would be.

Q. In fact, if your experience is an indication, it might be about the same as your percentage of trained craftsmen at your plant, is that correct?

A. It could very well be that low.

Q. If the affirmative action that you have taken with regard to trying to get trained craftsmen is any indication, you might even have a greater percentage than the percentage of minority craftsmen in St. James and St. John's parrishes, is that correct?

A. Well, I don't understand the greater percentage.

Q. Well, the people you have managed to get into your craftsmen positions at the plant, be it three or four percent of the total craftsmen at the plant, because of the fact that Kaiser has tried affirmative action to get these people, it may be that there are less than four percent minority craftsmen in the general population of craftsmen in those parrishes, is that not right?

A. It may very well be.

Q. Your experience would indicate that it is true that it might be as little as one or two percent minority craftsmen in St. James and St. John's parrishes?

A. I would agree with that.

[77] Q. Kaiser depends on Federal contracts to some substantial degree, is that right?

A. That's right.

Q. And Kaiser would like nothing better than to please the Federal government as much as it can on getting these minority people for the craftsmen positions, is that correct?

A. I think it's more than please. I think it's do it or else.

Q. In fact, when you talk about affirmative action, you're talking about real, honest-to-goodness efforts that you have made to try to find somebody to put in those jobs, is that right?

A. That's correct.

Q. So, when you talk about a statistical imbalance, you're talking about statistically imbalances that were caused outside of Kaiser and not by you, is that correct?

A. That is correct.

Q. Now, even though you have had these training programs existing from '64 to '71, most of your craftsmen were hired from outside the plant, is that correct?

A. That is right.

Q. And the reason why they were filled from craftsmen outside the plant was, primarily, because it's sometimes [78] to predict vacancies far enough in advance to train somebody?

A. Yeah, it is not possible to predict all vacancies.

Q. So, if you had vacancies occur, you didn't have a trainee, you pretty well had to hire somebody from outside the plant?

A. That's right.

Q. When you try to hire somebody from outside the plant, you advertise, primarily, in all-black newspapers?

A. Right.

Q. And you contacted, through this file, person-to-person, black applicants, is that right?

A. That's right.

Q. Kaiser has hired black employees at the Gramercy plant since its opening, is that right?

A. Yes, sir.

Q. There has never been any policy of not hiring blacks at the gate, is that right?

A. That is right. Kaiser, Gramercy is all I can speak for.

Q. I understand. But that plant opened in 1958, something like that?

A. '57 or '58.

Q. At that time, at least, there was no discrimination solely on the grounds of race and hiring practices, is that right?

[79] A. Yes, sir.

Q. And in response to any quota requirements, or the goal requirements of the Federal government, based on the minority work force, Kaiser has hired a greater percentage of black employees than the black employees comprise in the work force since 1969, is that right?

A. Since 1969, we have hired at the gate for production jobs, for non-craft jobs, just the kind of jobs that don't require any real experience, we have hired about 50 percent minority.

Q. And prior to that, it was what you viewed as the most qualified applicant, black or white?

A. Yeah.

Q. So, since then, you have been hiring 50 percent, which is greater than the 39 percent minority work force in the St. James, St. John's parrishes, is that correct?

A. Yes, sir.

Q. So, assuming that these training programs would go on and on, it may be that blacks entering the crafts will be delayed som what if it's only on the basis of seniority, but eventually, a large percentage of blacks are going to get a shot at bidding on those training programs, is that right?

[80] A. That's right. Once the group from '69 forward begins to make up a representative amount of employees in the plant and, so to speak, 50 percent, at that time, whenever that day is, there will be more blacks available to bid on a seniority basis, with equal or higher seniority.

Q. Just on the basis of who is employed at the plant with a certain amount of seniority, the black applicants are going to have a greater percentage than their percentage of

work force in the parrish, of those two parrishes, of shots at craft positions?

A. Well, let me explain. When we hire at the gate on a 50/50 basis, we're hiring non-skilled people. The 39 percent figure, of course, it's a work force availability in the entire area. Once again, when we reach that work force equality inside, as the community, we will then continue to hire the non-skilled people on that 39 percent figure, too, if that's the figure, at the time.

Q. Would you agree, Mr. English, that the 50 percent quota has caused discontent among the white workers at the plant?

A. I would agree that there has been discussion about it. I do not think, and I have not seen from my position, any racial problems in the plant. For the most part, [81] the Gramercy plant has always been a well-balanced, non-problem plant. One of our better, I would think, in the whole corporation. We have never had racial problems, racial tension, and I have not seen any increase in the tension since this program was put in.

Q. A couple of white employees, though, have either filed grievances, or filed with the Equal Employment Opportunity Commission, concerning this quota, is that correct?

A. Yes, they have.

Q. A number have expressed their discontent through the company procedures for filing grievances, is that right?

A. I think Mr. Weber's grievance is the only grievance that we have had filed on that particular issue. Of course, once again, realizing that he was, you know, filing a grievance on an issue which would be the same issue for anybody else.

Q. The training programs in the crafts are considered desirable by most of the workers at the plant, is that right?

A. Yes, they are.

Q. An applicant who graduates from a training program, in most instances, will be better off with respect to [82] pay and seniority, I mean, and job security, is that right?

A. I don't know if I fully agree with Mr. Weber on that position. We have had, in the training program to date, two employees who bid from Job Class 17 jobs, to the hope of getting a Job Class 19 job. However, by going from a shift type job to a straight day job, in the end, they're going to be making less money on the straight time basis. Now, the overtime monies are going to change that, so we were quite surprised, we had some of the more highly paid operating people bid the craft jobs. On the other hand, on the security aspect, once again, when you take a man out of a department who has significant department seniority, where he's protected in his department pretty well because he's high up, and he bids on a craft training program and is trained, he then becomes the most junior craftsman in that craft department, and any lay-off is then going to hit him first, as a craftsman, whereas, it may take quite a while, or there may have to be a pretty significant lay-off for him to be touched as a member of his previous department. So, the security thing, yeah, it could be, because that's going to depend upon the needs of the company. But if we [83] cut craftsmen, he's going to lose his job sooner, as a craftsman, whereas, we would have to cut fairly deep to reduce or lay off one of the more senior, higher paid operating employees.

Q. With regard to the blacks who are now being given what amounts to preferential treatment for selection of on-the-job training programs, these blacks were hired by Kaiser, rather than being refused to be hired?

A. That's right.

Q. If we assume for a second, and I realize there is no evidence of this, and that Kaiser denies this, but assume that at some point some black had been discriminated against in the past with regard to the hiring of a craftsman, that guy is long gone by this time, is that correct, because

he would have been hired from outside the plant, he would have been an applicant from outside the plant, is that right?

A. Yeah. Any black who had not been hired, obviously, would have, or may have, filed a charge that he was not hired, so the answer to your question is yes.

Q. So, to the extent that this purportedly is a remedial program, you're talking about generally remedial, rather than helping these particular guys, because [84] these particular guys have previously been discriminated against by Kaiser, is that right?

Mr. Falkenberry: If Your Honor please, I object to the relevance of that, and I believe counsel while he's entitled to cross-examine the witness and lead him, is not entitled to make characterizations about particular programs.

Mr. Fontham: Your Honor, I didn't characterize the program at all.

The Court: Objection overruled.

The Witness: Ask the question again, please.

By Mr. Fontham:

Q. Well, to the extent that Kaiser or the Union think that this is a remedial program, the remedy that's involved is a remedy applicable to the black race, rather than a remedy applicable to particular workers who are now being favored for previous discrimination, is that right?

A. Yeah. We do not think that we have discriminated inside our plant.

Q. So, these guys that are now being favored have not previously been discriminated against, to your knowledge?

A. They haven't, yes, that right.

Mr. Fontham: That's all I have.

[85] The Court: I would like to ask a few questions, which you all may wish to address yourselves to.

You have indicated, sir, that since 1969, Kaiser has hired from the gate a 50/50 black-white ratio. Can you tell me

what prompted that change in 1969? I think, to be complete, you have indicated that previously, you hired on the basis of what you considered the best qualified applicant, without regard to race. Then, beginning in 1969, you commenced hiring on a 50/50 ratio of black and white applicants, without necessary regard to the most qualified individual. Now, what prompted that change in 1969, if you know?

The Witness: That was prompted by a compliance review from the Office of Federal Contract Compliance, which is a division of the Atomic Energy Commission, who is the Federal government office that is responsible to make compliance reviews in this part of the country in the chemical industry, and following their visit to our plant in 1969, when they saw that they had a relatively low percentage of minorities in the work force, their recommendation to us was that we hire at a 50/50 clip until the time that the in-plant population equaled the general population in the community.

[86] The Court: You say their recommendation, was that a recommendation in the sense that was it mere advice, or would any consequences have flowed for failure to follow that recommendation, if you know?

The Witness: From my experience, a recommendation from them is pretty much telling us that we ought to do that if they are going to approve our affirmative action plan. If they don't approve our plan and we are held in violation of that, then they would present us with a show cause order and give us 30 days, I think, to show why we should not live up to what they have recommended, and in the end, we either then lose as an entire corporation, not just our Gramercy plant, but as an entire corporation, all Government contracts, or contracts with any other company that does business with the Government.

The Court: So, then it would be a requirement that you follow this recommendation in order to do business, for your company to do business with the Government?

The Witness: We just went through another compliance review last month. Recommendations they make, we follow.

The Court: Now, what, specifically, prompted the change in 1974, in the Union agreement, which brought about the change from seniority to race with regard to [87] bidding for training programs?

The Witness: Well, I think when the company and when the industry and when the Steelworkers, the Union, looked around and read the Court decisions being made. We looked at the settlement that had just been made with the steel industry and the steel companies. We looked at the large sums of money that companies were being forced to pay, and we looked at our problem, which was that we had no blacks in the crafts, to speak of. There was certainly no availability, because we had beat the bushes to death, and we had the Government pressure that we had, and we realized that if we did not do something on our own, then the Government was going to do it for us, and in one case that was mentioned earlier, the Crown Zellerback case, and the Baton Rouge Kaiser plant, the Government has come in to settle company-union affairs for us, and in every case, the Government's remedy—

The Court: What branch of the Government are you referring to?

The Witness: Well, the OFCC, the EEOC, the NAACP, the Legal Defense Fund, and in the case of Baton Rouge, every branch has been into that plant, and as I was saying, whatever their remedy is, believe me, it's [88] one heck of a lot worse than something we can work out ourselves.

The Court: Specifically, has the EEOC in any way pressured you or required that this action take place, and in referring to "this action," I'm referring to the 1974 change?

The Witness: I don't think I can answer that, because I was not a part of the actual agreement.

The Court: Please don't speculate.

The Witness: Okay, I can't answer that.

The Court: Can you tell me whether or not the action in making the change in 1974, in the Union contract, was a voluntary action by the company and the Union, or whether it was done as a result of the requirements which you have described, by various Governmental agencies? Again, if you don't know, don't speculate.

The Witness: Well, I think it was done voluntarily.

The Court: Because of the fear of consequences?

The Witness: Yes.

The Court: If it did not?

The Witness: Yes.

The Court: Do you know from your company's policy and the Union policy, whether it would have been done, in the absence of these requirements, on purely [89] what they considered to be benevolent social reasons, or any other reasons? If you don't know, please don't speculate.

The Witness: I'm guessing. I won't guess. I don't know.

The Court: That's all I have.

Mr. Middleton: I have no further questions.

Mr. Falkenberry: I have a few, Your Honor.

By Mr. Falkenberry:

Q. Now, Mr. English, Mr. Fontham asked you whether or not the Union had negotiated away the prior industrial experience requirement for entry into the training program, and I believe you said that they had, is that correct?

A. No, I think he asked me if they had attempted, over the years, through negotiations, to negotiate it away, and I said yes, they attempted to do so.

Q. Throughout the years, is it true that the Union's efforts were directed towards obtaining additional opportunities for their members, who were also Kaiser employees, as opposed to creating opportunities for people from the street?

A. That's right.

Q. Would it be fair to say that that is one of the considerations behind the fact that there is a training [90] program at Gramercy and at other Kaiser plants today, is the desire of the Union to have opportunities available for their members and Kaiser employees, rather than for new people.

A. That's right.

Q. Now, he also asked you whether or not it was a fact that whites had approximately 85 percent of the total hourly work force at Gramercy, and whether or not they had to compete for 50 percent of the training opportunities, while blacks made up only 15 percent or so, and they got 50 percent, do you recall that?

A. Yes, I do.

Q. Now, it's also true, is it not, that prior to the institution of the one-for-one ratio in the 1974 agreement, whites already had nearly 98 percent of the craft jobs?

A. Yes, they did. Whatever the figure was, they had the great majority.

Q. I think one of your exhibits, or maybe you testified, that prior to 1974, black representation in the crafts was something a little more than two percent?

A. You're right. That's right.

Q. It's Kaiser Exhibit 1, which you have seen, and after the training program, it was only 4.45 percent?

A. Yeah. I think it was about 2.3 percent before the training [91] program.

Q. All right. But what I wanted you to answer was, it's true that whites had nearly 98 percent of the craft jobs, prior to the effective date of this contract that's under attack here today?

A. That's true.

Q. With the exception of two black carpenter-painters who were admitted to a training program, is it not also true that the prior industrial experience requirement kept all other black Kaiser employees out of the available training programs?

A. That's right.

Q. But for those two black carpenter-painter trainees, every other on-the-job training program selectee or trainee, until the institution of this program, were white, is that right?

A. Yes.

Q. From your eight or so years' experience, Mr. English, with Kaiser, have you always worked in the area of industrial relations?

A. Yes, I have.

Q. Would it be a fair statement, from your experience, to say that at the plants you have worked at and the plants you have visited, both Kaiser plants and other plants in the industry, that the craft jobs are [92] white dominated, in the vast majority of the instances?

A. I think that the Kaiser plant is very representative of our industry and other industries, in that respect.

Q. Would you say that was also true, regardless of what the available black population was? I don't mean craft population, I mean general hire population. If it's five percent or 39 percent, or somewhere in between, the crafts are still mostly all white?

A. That is right.

Q. Now, Mr. Fontham asked you whether or not it was true that one day, because of your post-1969 hiring ratio of one-for-one, that blacks would have greater opportunities to get craft jobs than whites, by using straight seniority, do you recall the question?

A. Yes, I do.

Q. Now, with respect to that question and to your answer to him, assuming that is true, it will take an awful lot of years before that comes true, isn't that a fact?

A. I think it will take a lot of years.

Q. Is it also true that by the time blacks reach that seniority status, or there are so many blacks where they will have such an opportunity, that most of the blacks, or many of the black employees who are at [93] your plant now and might desire a craft job, might be retired or gone, or no longer Kaiser employees, and will it take that long?

A. Well, yeah, there will be a lot of them gone or hired, but on the other hand, some coming up.

Q. It could take as much as 15 or 20 years before people who are hired this year are going to attain a seniority level to allow them to compete on straight seniority for these jobs?

A. Yeah, we have found that even under the 50/50 hiring ratio at the gate for production type jobs, that we are only increasing our minority percentage about one percent per year.

Q. And the minority percentage of all employees at the Gramercy works, as I understand your testimony, is roughly 15 percent?

A. 15.8, as of December '74.

Q. And this is despite the fact that there is an available black work force of some 39 percent and, also, despite the fact that Kaiser has been hiring on a one-for-one basis since about 1969?

A. That's right.

Q. And that one percent increase, just for the record, that's been about one percent per year since 1969?

A. Yes, it has.

[94] Q. Have you received the bids for the jobs that were posted, beginning April 1974?

A. Yes.

Q. From those bid records, can you determine whether or not Mr. Weber would have been successful in any of his bids, had you followed straight seniority, as he suggests?

A. I just took another look here when Mr. Weber was being questioned. On those three bids, he was somewhere between the 35th and the 40th most senior guy on each of the three different bids, and even though there were some senior employees who turned down their opportunity when they had the chance to get in after bidding, on any kind of a comparative ratio basis of employees turning down jobs, now, in the plant, I don't think that Mr. Weber would have gotten into any of these programs this time around. These are pretty choice jobs, especially at the start of the training program.

Q. Now, Mr. Weber actually is in no different shape from the blacks who you're hiring today, one of these days, he'll become senior enough to get one of those training programs, if he's still interested, isn't that true?

A. That's true.

[95] Mr. Falkenberry: That's all.

By Mr. Fontham:

Q. If vacancies arrive and it becomes necessary, Kaiser will still continue to hire craftsmen from outside the plant, if necessary, is that right?

A. That is right.

Q. So, if for one reason or another, black craftsmen become available from outside the plant, you could raise the ratio of black craftsmen in the plant relatively sooner than you could with regard to the training programs, is that right?

A. Under the terms of the Memorandum of Understanding, in addition to our agreement to fill trainee vacancies on a 50/50 basis, we have also agreed to attempt to hire from the outside on a 50/50 basis, and we will do that in every case that we hire from the outside. At the same time,

we realize that the outside availability is not going to significantly change for many years, also.

Mr. Fontham: Thank you.

The Court: Any other questions, gentlemen?

Mr. Falkenberry: No.

The Court: Thank you, sir. You may step down.

(Witness excused.)

The Court: Call your next witness.

[96] Mr. Middleton: Mr. Bouble.

THOMAS M. BOUBLE,

after being first duly sworn, was examined and testified as follows:

Examination

By Mr. Middleton:

Q. Mr. Bouble, where do you live, please?

A. Walnut Creek, California.

Q. By whom are you employed?

A. Kaiser Aluminum & Chemical Corporation.

Q. How long have you been employed by Kaiser Aluminum & Chemical Corporation?

A. Nineteen years, plus.

Q. What is your present position and responsibility with the company?

A. I'm the director of equal opportunity affairs.

Q. Is that for the entire Kaiser corporation?

A. Yes, it is.

Q. And how long has that been your job?

A. Eight years.

Q. In that connection, do you have any familiarity with the [97] company's policy and background with regard to equal employment opportunity?

A. Certainly.

Q. That's your one and only job, I assume?

A. That's right.

Q. Could you state, sir, what the company's position has been with regard to equal employment opportunity, over the past years, that you have been familiar with?

A. I think that the posture of the company has not changed substantially in the last eight or ten years. We not only accepted, we welcomed the concept of equal employment opportunity. We made it a part of our policy, a very integral part of our policy. We have carried it out as policy in many instances, as a prime mover, vis-a-vis, the law. We think it has been a major contributor to the management of human resources in the corporation, all employees. The elimination of barriers works to the benefit of everybody who works for us.

Q. Now, in that connection, have you noticed whether there appeared to be any discrepancies with regard to the employment of minorities in skilled craft work at various plants of the company?

A. I think that's a classical industrial problem in every [98] industry in the United States, and in every area of the United States. It's been the principal issue, I guess, in trying to achieve equal employment opportunity for all citizens.

Q. Are you personally aware of the practical, or background basis for this discrepancy in apparent employment opportunity in skilled trades for blacks?

A. My personal opinion is, it's a direct result of employment discrimination over the years, the lack of opportunity on the part of the blacks in some areas of the community, Mexican-Americans, certainly, women, to obtain the kind of training that was necessary to achieve the skills.

Q. Has any program been followed by the company, prior to the 1974 master agreement with the Steelworkers

Union, to secure qualified minority employees in the skilled craft groups?

A. It has been a major effort in every one of our facilities since the inception of the affirmative action. I think there has been a very clear recognition that the craft jobs are the premier skills of the blue collar workers, and the issue has not been the hiring of production employees, that's not the problem, and there is a multitude of ways that we have attempted to achieve this, and a multitude of [99] organizations and so forth we work through, and with, to achieve it.

Q. To what degree did any of these achieve any marked success in obtaining opportunities, or furnishing jobs in the skilled crafts to minority employees?

A. They were, fundamentally, unsuccessful.

Q. As a result of that, did you or anyone else representing the company reach any conclusions as to what, then, would have to be done to bring about any substantial measure of relief?

A. Oh, yeah, I think that prior to the 1974 Steelworkers negotiations, and there have been lots of discussions about this, I think anybody who has been active in the field of equal employment opportunity, affirmative action, recognized that unless employers and unions, jointly or severally, did something creative, in effect, to change the pattern, that there would be no change in the present effects of past discrimination, as it relates to craft occupations, and I think that it was totally consistent with the concept of affirmative action that the Steelworkers and the members of this industry and our company came up with the concept that appeared in our 1974 labor agreement. Something had to be done to change the scene, and the concept of changing seniority systems [100] to broaden opportunities, the concept of aggressively, creatively, changing the method by which we manage our human resources, this was not inconsistent with what was going on in the industry. Certainly, it was not inconsistent with the Court

decisions. Certainly, it was not inconsistent with the best thinking of the professionals in this field in this country, whether they are with companies, civil rights organizations, Federal government.

Q. Are you explaining, then, sir, why the new procedure for craft training was instituted as part of the 1974 agreement?

A. Absolutely.

Q. Could you state, as specifically as you know, and I would assume you know, since this falls within your area of corporate responsibility, what the background reasons were, specifically, for the change in program instituted in the 1974 agreement?

A. Certainly. In the latter part of 1973, it was very apparent to us, as a company, that if we were going to bring into our industry minorities, we happen to be talking about blacks in this particular area, into the craft occupations, we felt we would have to, as a company, modify our seniority applications, which would give preference, in fact, to minorities. [101] As I indicated, that was not, of course, an original idea in the total concept of affirmative action, but in the latter part of 1973, Mr. Stewart, who is our Vice-President of industrial relations, and I, in meetings with the Steelworkers, discussed this problem with them. There was certainly a concert of opinion that there was a problem, and one that had to be solved, so that they were preparatory discussions, prior to the negotiations, that there had to be some solution arrived at to change the situation.

Q. Other than compliance with the proper management of human resources and compliance with the company's own policy, and perhaps, the Steelworkers' own policy, were there any practical, pragmatic reasons occurring or taking place that would have added emphasis, perhaps, to the 1974 negotiations?

A. Oh, certainly, any compliance review that we might have had by any agency, and the two agencies that review

us are the Atomic Energy Commission and the Department of Defense, I don't think I have sat through a compliance review where it wasn't apparent that there was few, if any, minorities in the craft occupations, and there was always, certainly, the suggestion, on the part of the compliance review [102] officers, that we devise and come up with methods and systems to change that particular thing. I suppose, as a company, we could have taken a position that we will advertise in all the black newspapers, we will do this and we will do that, and end up with the conclusion that the availability of qualified minorities in the market place for employment with craft skills is minimal, and end up baying at the moon, as it were. But I don't think the concepts of affirmative action permit a company—I don't think it permitted us, policy wise, to merely say we can't do anything about this problem, because it permeates all the things that affirmative action is concerned with.

Q. In your observations and in your opinion, did the very small statistical presence of minorities in the craft groups indicate that there had, in fact, been discrimination in the craft groups?

A. Absolutely. There had not been, over the years—minorities, obviously, had not been permitted to participate in certain skilled occupations and, therefore, they couldn't be available in any quantity in the market place.

Q. Now, sir, you have been discussing, I assume, in your previous answers, the company's situation and [103] employment situation, generally, at all its plants?

A. All the plants, I don't think there is any difference in any facility that we have, in terms of the availability of skilled craft people in the market place that are minority or women.

Q. To your knowledge, sir, was a similar problem, and a similar attempt to solve it, utilized by any other major corporations in the same or related business to Kaiser?

A. You mean in the contract?

Q. Yes, this method of approach that's adopted in the 1974 agreement?

A. It's adopted in the aluminum industry, the steel industry, the can industry, and I'm sure that if you went out and investigated, you would find that there are industries, smaller, independent, or otherwise, that have arrived at the same conclusions and applied the same principles.

Q. Is it fair to say that the principle and the approach here under consideration, the craft training program on a one-for-one basis, pending arrival at objective pecentage goals, is one that has been adopted by a large number of national companies and corporations that involves, perhaps, 50 or 100 different plants around the country?

[104] A. Certainly.

Q. And perhaps hundreds of thousands of employees?

A. Certainly.

Q. And these agreements were reached on the basis, not of the individual facts at Kaiser's Gramercy plant only, but what was deemed, in effect, to be a national problem?

A. Being a national social problem.

Q. Mention has been made, sir, of the Office of Contract Compliance, and the compliance reviews were mentioned. How much pressure, or how much in the way of economic teeth, does this apply to Kaiser, what percentage of Kaiser's business is directly with that business?

A. Our percentage of business with the Government, I would estimate at substantially less than one percent. Our business with other industries that do business with the Government would be, of course, substantial.

Q. Did you, or did any of the other corporate officials dealing with and working out the procedure adopted in the 1974 agreement, have in mind any effort to comply with national policy, as I understand it, rather than just with discussions of the compliance review officers?

Mr. Fontham: Your Honor, at this point, I'm going to object to this witness, who has repeatedly referred [105] to

court decisions, being in harmony with court decisions, and national policy and so forth, unless some foundation for all of this is established, as he's being the purveyor of whatever the national policy is. I know of no national policy which requires racial quota, and I would like to see the foundation for all these statements before he gets to testimony about it. I object, Your Honor.

The Court: I think I'll overrule the objection. The witness, I think, is entitled to state these things in order to show the state of mind of his company, what the court decisions may or may not have meant, but to the extent the company, or this witness, may have understood them, I think they may be relevant as showing the state of mind. For that reason, I'll overrule the objection.

By Mr. Middleton:

Q. Can you answer the question?

A. Pose it again, please.

Q. Was this program in any way influenced by what you and those responsible with you for Kaiser's policies were attempting to do, and what you understood to be national policies with regard to employment opportunity?

A. Yes, and that was our understanding. I'm not suggesting [106] that there is a national policy that suggests a 50/50 ratio of employment. I'm suggesting that there is a national policy, and certainly a policy of my corporation, to treat affirmative action in the full scope of what we believe the intent of it to be, and that is, to create equal employment opportunity.

Q. Now, sir, on a pure economic basis, what would be the cheapest procedure, on the pure cost approach, for obtaining qualified craft employees at the various Kaiser plants?

A. Hire them off the street. If we had adequate supply of craftsmen, candidates coming off the street, that would be the logical way for us to fill our craft jobs, rather than train, because training costs money.

Q. And I would assume, sir, that the less background and experience that the trainees have in the particular craft, the more expensive and the longer the program would have to continue?

A. The more prolonged the training program would have to be, that's correct.

Q. Have you, in your position as a corporate official in charge, noticed whether or not there has been any improvement in the statistics, as a result of the [107] '74 agreement, that is, whether there now appears to be more minorities in training for the various craft jobs throughout the company?

A. Certainly, I don't know the figures right off the top of my head, but there is certainly more minorities and women in O.T.J. programs than there ever were before. It almost goes like from zero to something.

Mr. Middleton: I tender the witness.

By Mr. Falkenberry:

Q. Mr. Bouble, the Steelworkers are the largest trade union with whom Kaiser has a collective bargaining relationship, is that correct?

A. That's correct.

Q. And the Steelworkers represent production and maintenance employees at most of the Kaiser plants, nationally?

A. That's correct.

Q. In your position with Kaiser, and in your relationship with the Union, have you gotten some flavor for what the Union's position has been with respect to its willingness, or its desire, towards bringing about equal employment opportunity, at least insofar as its relationship with Kaiser is concerned?

A. Yes. My impression, in our relationships with the Steelworkers' Union and the Kaiser Aluminum & Chemical Corporation, is that they're highly motivated and I [108] have to say the word creative, in attempting to create a

situation of equal employment opportunity and to eliminate the present effects of past discrimination.

Q. Would it be a fair statement to say that the increased training opportunities that Kaiser has provided come, at least in part, from the Union's desire to provide opportunities for its members, as opposed to having new people come from the street?

A. The Steelworkers' position, consistent, has been to have training programs to train craft people, so that our employees and their members in our plants would have the opportunity to learn a trade, right.

Q. Does the contractual provision that we have been litigating about here today, does it take its essence—was it created from the experience that the parties to the contracts had had and were having in the field of equal employment opportunity?

A. Certainly, it had impact on it. The litigation that the various companies have been involved in, the historical relationships with the Federal agencies that we are all concerned with, certainly, the steel agreement, I think it was our position that we should, and certainly been our company's position all along, that we should do those things that are necessary, [109] without having to have it forced down our throat or require us to go into court to comply with the laws of the land.

Q. Would it be a fair statement to say that the 50 percent minority requirement established by the contract is remedial in every respect and is not just a quota to increase racial representation?

Mr. Fontham: I object on the ground it calls for a conclusion.

The Court: Objection sustained.

Mr. Falkenberry: If Your Honor please, I would except. I don't think it calls for a conclusion. I think because the witness participated in the preparation of the document that's under attack here today, he's entitled to——

The Court: You asked him to compare, counsel. I think on the basis of the comparison that you asked him, that does call for a conclusion. You may be able to rephrase the question.

By Mr. Falkenberry:

Q. Really, what I'm asking you, Mr. Bouble, is whether or not the contractual provision here today was remedial?

A. We think it's——

Mr. Fontham: I object to that on the grounds that I [110] think counsel is going to have to be a little more specific in what he means by remedial. Remedial, under some court's decisions, means you take some guy that's discriminated against and correct it.

The Court: I think the question is vague.

Mr. Falkenberry: If I might try one more time?

By Mr. Falkenberry:

Q. Mr. Bouble, when the parties negotiated this training provision, did they consider whether or not there was a necessity, based on the absence of blacks from crafts at Kaiser plants, that there was a need for remedial action which necessitated changing straight seniority application as it applied for training program applicants?

A. Yes, we did consider it to be remedial, in the sense that, in our opinion, there was obviously discrimination in the past, not ours, per se, but the total sum and substance of education and training to obtain skills, that created a situation that called for a remedy such as the one we derived out of our discussions. I think it goes without saying that we would, under any set of circumstances, not intentionally create problems in reference to seniority, if we didn't feel that was a necessary vehicle to remedy a situation. We recognize the concept of [111] seniority and the

importance of it to employees and people in the labor movement.

Q. Does your experience in the field of labor relations, and particularly in equal employment opportunity, indicate that seniority expectation is a pretty sacred thing, as far as trade unions are concerned, and trade unionists?

A. Sure.

Q. Would it be your judgment, based on your experience in these things, that it takes a pretty serious problem to get a trade union to make the kind of seniority modifications made in this instance?

A. Yes, I think it takes a serious problem, and I think it requires a high sense of accountability, both, to be willing to make that kind of a change.

Q. As you would perceive the problem created by such seniority modifications, would most of the discontent from seniority modifications, whether voluntary or judicially ordered, come from white employees, in the EEOC context?

A. Would most of the discontent from that——

Q. From the seniority modifications, generally?

A. Come from white employees, certainly.

Mr. Falkenberry: Nothing further.

By Mr. Fontham:

[112] Q. Mr. Bouble, you have referred, during the course of your testimony, to the present effects of past discrimination. Do I understand you to indicate that these employees that are now being favored were discriminated against by Kaiser?

A. No.

Q. It's your supposition that they may have been discriminated against somewhere else outside the plant, for instance, in school, or by some other party, is that right?

A. My opinion is that the fundamental effects of past discrimination in the field of education, job training,

etcetera, has created the condition that we have to deal with in terms of minority craftsmen.

Q. You're talking about the same factors which led there to be a substantially lower percentage of black lawyers than there were black people in the general population, is that right?

Mr. Falkenberry: If Your Honor please, we object to that sort of comparison. I don't think there is any relationship—no evidence about availability of black lawyers in this case.

The Court: It's cross-examination, objection overruled.

By Mr. Fontham:

Q. The same kind of factors, Mr. Bouble?

[113] A. Yes, I think that the inadequate educational opportunities for certain groups of the citizens in this country, to achieve, it would be the same thing, certainly, for lawyers, for doctors, for engineers. Discrimination is very pervasive.

Q. With regard to these employees at the Kaiser plant, you don't do a study on what their past history was like, do you?

A. No, not specifically. Individuals?

Q. That's right.

A. Man for man, no, I don't think we examine each and every individual and what his opportunities and so forth might have been, no.

Q. You don't do a study to determine if some black employee had fewer educational opportunities, say, than Mr. Weber did, is that right?

A. No. We would not do that with all the employees in our corporation. No, I think that on a general basis, we have a familiarity with that type of situation, from our sum total of our experience.

Q. So, you're talking about general conclusions that you have drawn from the sum total of your experience, and one

of the general conclusions that you have drawn is that blacks, in general, have been discriminated against in the past, is that right?

[114] A. Certainly.

Q. Now, is it also possibly one of your general conclusions that there may be some blacks who haven't been discriminated against in the past?

A. In certain aspects, certainly.

Q. Is it possible that there may be some whites who have had substantially lower educational opportunities than other whites?

A. Certainly.

Q. Is it possible that there may be some whites who have had substantially lower educational opportunities than blacks?

A. Yes.

Q. Is it possible that, in fact, in this case, all of the whites who were passed over lacked the skills that the blacks lacked?

A. You're talking about prior experience, in this particular case?

Q. That's right.

A. Well, I understand that was the case.

Q. Mr. Weber didn't have craftsman experience, just like the blacks didn't have craftsman experience, isn't that right?

A. That's my understanding

Q. Now, with regard to what you're doing in this case, I [115] take it that you understand that seniority has been the major criterion for selections for on-the-job training programs in the past, is that right?

A. That's right.

Q. So, you recognized that when you waive the number one requirement, the seniority requirement, and you take a black with less seniority than a white, you're thereby favoring the black on grounds of race, is that right?

A. He's getting preferential treatment, that's correct.

Q. So, the black is being selected for a program primarily on the basis of his race, is that right?

A. His being one of the protected class, that's correct.

Q. And by the same token, when that selection is made, there is a white who is being discriminated against on the basis of race?

A. By virtue of changing the application of seniority. Well, I could answer that both ways. I could say yes, the white candidate is not getting the privileges he had under a prior circumstance, when seniority was the only consideration. Yeah, I guess you would say that.

Q. He's not getting the priority he would have had except for the fact that he's white?

A. Except for the fact that he is white?

[116] Q. That's right.

A. Well, he may have been female.

Q. So, at this point, Kaiser has now created a situation in which not only is there some general supposition that blacks have been discriminated against in the past, but Kaiser has made sure that there are some whites that have been discriminated against, is that right, on grounds of race?

A. No, I don't think that is correct. I think their opportunities have been modified, and, certainly, that was not the intent. Our objective has not been to develop rationales to defeat the concept of affirmative action and equal employment opportunity. Our concept has been to try to devise means by which we can deal with a fundamental issue.

Q. Is your position that the issue is fundamental when a black has been discriminated against in the past, but not when a white has been deprived of the same opportunities?

A. I think that's a very obvious significant social question today, is what must be done or should be done to create the pressing effects of past discrimination, if there are any other. One of the interesting experiences we have, you know, in this business of trying to do what we think is

proper and legal and [117] so forth, is that we have built a mousetrap, as it were. The industry, particularly, has the responsibility for dealing with this issue. We have to ride the horse that is being beat, as it were. We use our best judgments to build the mousetrap that will least disrupt the system and still achieve the goal, other than trying to find rationales for not doing it.

Q. Mr. Bouble, I'm not questioning your motives, but I'm questioning some of your conclusions. With regard to the employees that apply at these plants, black or white, do you have any mechanisms on your applications for determining what their past history was, or who has discriminated against them outside the plant?

A. No, we don't ask who's discriminated against them outside the plant. We certainly seek out their work experience, their education. We don't ask for any evidence of their prior discrimination.

Q. Then, when you favor a black because he's black, under the training programs, you really don't know if he's previously been discriminated against, vis-a-vis, a white in the outside world, is that correct?

A. I think that begs the issue, but on each individual person, I would have to say no, we don't individually and specifically, but I'm fundamentally satisfied [118] that the vast majority could present a dossier of experience that would substantiate it.

Q. With regard to getting into training programs, Mr. Bouble, do you have any general supposition that the vast majority of the applicants would be able to show that they tried to become a trainee somewhere and they weren't allowed to?

A. Would I make that assumption?

Q. Yes.

A. I suppose, as a general statement, based on my experience, I can make a presumption that the vast majority of minorities have not had the training opportunities and have been, either through artificial barriers or pure rejec-

tion, deprived of those opportunities. Yes, that would be my personal opinion.

Q. We're talking about the craft men. Keep in mind, we have an awful lot of white people who didn't have the craft experience.

A. We have an example of our Baton Rouge facility, and there, our craft employees are represented by the building trades, where we requested that building trades provide us with minority candidates, and in the majority of situations, they were unable to because there weren't any in the building trades, and we had to go out and recruit minority candidates [119] for craft positions there. I think there is ample, and has been ample evidence presented in the last six or eight years that minorities were discriminated, in fact, in terms of their ability to get into the building trades occupations.

Q. Let's get the question straight, sir, so I know what you're saying, now. The majority of your workers who are black at the Gramercy plant tried to get into crafts and were denied the opportunity?

A. No, that is not the question I'm answering.

Q. Why don't you answer that one?

A. I don't know what that answer would be.

Q. Now, with regard to this 50 percent quota that you all have installed on the basis of race at the Gramercy plant, would you say that that is a quota for non-whites, established in proportion to the percentage of non-whites in the labor market area?

A. No. If I understand your question properly, that same 50/50, as it's called, hiring, or going to the programs, is applicable in all our facilities, even where the minority population of that area might be as low as two percent, three percent.

Q. But am I not correct in stating that the goal of the 50/50 is to bring the minority representation up to the proportion or percentage for non-whites in the [120] labor market area?

A. Yes, certainly. That's a long-range goal, and, certainly, that's the intent, to increase the representation of minorities that will approximate the participation in the labor market, right.

Q. Would you say that with respect to training programs, your quota gives negroes, or blacks, other minorities, special seniority rights, at the expense of white workers hired earlier?

A. Certainly, some white workers, anyway, no question about that.

Q. Would you say that this program that you all have instituted amounts to a change in the occupational qualifications set for employees, simply because proportionately, fewer negroes than whites are able to meet them?

A. No.

Q. You would not say that's true?

A. No, it doesn't change the qualifications for the job.

Q. As I understood it, there used to be a training qualification before you could get into a training program?

A. Oh, excuse me just a moment. Maybe I misunderstood your question. The prior experience requirements for the training program has been eliminated.

Q. Because, partially, at least, there were proportionately [121] fewer negroes than whites able to meet them, is that right?

A. You mean, is that the motive behind that?

Q. Yes.

A. No, that was not the exclusive motive. You see, first of all, you have to recognize we have had, in my company, minimal to zero training programs of this sort. We're talking, now, about training people from scratch, as it were, be they black or white or female. So, we didn't feel that it was very intelligent to impose an experience qualification that couldn't draw any of our own employees into the program. That would be self-defeating.

Q. Let me switch gears and change that, because I was a little confused myself when I started that question. If we

assume, or if we treat seniority as the occupational qualification, this program is a changing of occupational qualifications, simply because, proportionately, fewer negroes than whites are able to meet them?

Mr. Falkenberry: If Your Honor please, I object to that question on the ground, as a matter of law, seniority is not a qualification. I think every court in every district in the United States has held seniority and qualifications are entirely [122] separate things, and it calls for a conclusion of law, which is erroneous.

Mr. Fontham: Your Honor, I'm not referring to this in any sense of the term of art, but I think it's established by the testimony that the sole qualification, in this case, was length of time in service, and to that extent, it's an occupational qualification.

The Court: I think the evidence we have heard so far is permissible and relevant and doesn't call for a conclusion, in the sense that seniority is not being used in anything other than the sense that it has been used throughout this trial, as referring to a basis for qualification in the past, without regard to the merit or demerit of it.

Mr. Falkenberry: I understand what Your Honor says, I make that objection just for the record. I want to make sure if we wind up on Camp Street, the Court of Appeals understands it. I think the Court of Appeals has a very different understanding. While seniority may be a requirement, it is not a qualification. When Mr. Fontham talks in terms of bona fide occupational qualifications, that is a term of art under Title 7 litigation.

The Court: Mr. Fontham, perhaps you better ask the [123] question again. I think it's been lost in the argument.

By Mr. Fontham:

Q. Mr. Bouble, to the extent that the prerequisite, or qualification, for these on-the-job training programs has

been seniority, the institution of this program is, in effect, a change in the qualifications set for employees to enter the training programs, simply because, proportionately, fewer negroes than whites are able to meet them, is that correct?

Mr. Middleton: Your Honor, I'm not sure I can understand that question, myself.

The Court: Well, I understand it.

Mr. Middleton: I want to enter a formal objection that this is asking for a very legalistic conclusion for the witness, that on a question so complex that in my own—

The Court: I think I understood it. I think the witness may be confused. Let's ask the witness if he understands it.

The Witness: Let me tell you what I think the question is. Are you asking me if the experience requirement that was previously there—

By Mr. Fontham:

Q. I'm talking about seniority only, length of time in [124] service. This change in the program was instituted because, proportionately, fewer negroes had the length of time in service to accomplish the goals you wanted to accomplish, by using the straight seniority basis, is that right?

A. You're asking, did we modify the seniority in order to enhance the movement of minorities into craft occupations, the answer is yes.

Q. And although you have some general opinions, based on fairly decent evidence, I'm sure, with regard to general discrimination against blacks in America, you have no evidence, necessarily, that the persons being preferred under this program are actually victims of previous discrimination, is that right?

A. No, I personally do not have that kind of evidence on each of the individuals that are working in our Gramercy plant. I might add that in my particular responsibility, I would not pursue that.

The Court: Is there anything in the plan designed to determine that?

The Witness: To determine whether or not there have been prior discrimination?

The Court: Yes, on an individual basis.

The Witness: No.

By Mr. Fontham:

[125] Q. Finally, Mr. Bouble, I take it that especially in regard to the fact that you all have undertaken affirmative action to a large extent, Kaiser's position is that discrimination against these blacks in the past has been by somebody other than Kaiser, is that correct?

A. You mean at Gramercy, or are you talking generally or broadly? I don't think there is any employer in the United States, prior to a given time in our history, that didn't practice employment discrimination in some form.

Q. Since the opening of the Gramercy plant?

A. This is historically. No, I know of no specific evidence of discrimination at the Gramercy plant. Had there been, we would have tried to correct it.

Mr. Fontham: I have no further questions.

The Court: Mr. Bouble, I would like to clarify just a few matters. You obviously have expertise in this field. You have referred repeatedly to the concept of affirmative action. Without appearing stupid, as I think I understand what's encompassed in that, however, I would like for you to tell me, if you know, what the genesis was of the concept of affirmative action, as you understand that genesis to be.

The Witness: You mean the terminology, or the concept, [126] per se?

The Court: The concept, without regard to the terminology. First, perhaps I should ask you to define affirmative

action, as you understand it to be, then we can go from that and we'll get the concept, and then we can go on with the genesis of the concept. Since you referred to the term "affirmative action", why don't we get your definition of it? I'm not holding you to any legalistic precision, I'm merely trying to get your general understanding, as you appreciate it.

The Witness: I think the concept of affirmative action, affirmative action is a plan for an employer to develop, to do all of those things that creates opportunities of employment for all citizens. In the process of that, to remove barriers that would make that affirmative action a hollow gesture. It's not a passive thing, there is a difference between equal employment opportunity and affirmative action. Those are not synonymous. Opening the doors of employment to minorities or females, where previously they had been barred from employment, is but one step. To then create an employment environment where they can achieve and compete and perform is where you get into the concept of affirmative action. [127] I think affirmative action calls for remedial measures.

The Court: In other words, I take it that included within the concept of affirmative action, as you understand it to be, is color awareness, as opposed to color blindness, with regard to those with whom you're dealing?

The Witness: Certainly. Yes, you would have to be aware of that.

The Court: And with such awareness, giving certain preference or priorities to those whom you feel have been deprived at some time by someone, so as to affirmatively remedy these prior deprivations, either against individuals or a class of individuals?

The Witness: I think that's fair. I think it calls for preferential considerations.

The Court: And I take it that you have, by virtue of your position, given a great deal of study to the concept of affirmative action, as it particularly can be applied in employment in the industry?

The Witness: Well, I hope I have. I spent the last eight years working with it.

The Court: Now, can you tell me where the genesis of this concept originated?

The Witness: Well, as far as I'm concerned, it originated [128] out of the Executive Orders and the regulations that were issued from the Executive Orders, to define a program of correction in the plans for progression, in fact, developed affirmative action concepts. Some of the language that came into Order 4 was language and concepts that came directly from the work for plants for progression, which was a joint effort on the part of the industry to create employment opportunity.

The Court: When did that happen?

The Witness: Civil Rights Act was passed in '64. '63, '62, right in there.

The Court: Prior to the Civil Rights Act?

The Witness: Prior to the Civil Rights Act. I'm pretty sure of that, on that timing. I may be off.

The Court: Now, are you relatively sure that it was prior to the passage of the Civil Rights Act?

The Witness: Yeah, I'm not sure of that. I'm not exactly sure what the date was, but it was prior to the passage of the Civil Rights Act.

The Court: I assume, therefore, that having considered the ramifications of the concept of affirmative action and its genesis, that you have considered that being aware of color, for example, take one aspect of discrimination, taking action pursuant to [129] color, involves making discriminatory decisions, in the sense that one is discriminating, or making decisions based upon color. I presume you have taken that into account?

The Witness: Certainly. I think the question of preference for people, because of color, race, religion, sex, certainly has been taken into account as a practical matter.

The Court: I assume that in taking into account the positive aspects of it, that is, the preference, you have also taken into account the negative aspects, that is, the detriment that would flow to those who, for one reason or another, belong to a group or class not considered to have been deprived, for whom affirmative, positive steps are not deemed necessary?

The Witness: We recognize, and have recognized, that certain aspects of affirmative action do work to the detriment of some employees.

The Court: And without dealing in legalisms, or without trying in any way to do anything other than ventilate all of the issues, this is what has come to be known, generally, as reverse discrimination, I believe?

The Witness: That's referred to from time to time by our [130] white employees as reverse discrimination, yes.

The Court: I think by legal scholars and others, if you have studied any of them, as a fallout of affirmative action?

The Witness: I think that would be a correct statement. I don't know reverse discrimination is really the proper inference.

The Court: To the extent that you have agreed with me, I believe, that to the extent you make decisions based upon color, you're discriminating?

The Witness: Yes.

The Court: That doesn't mean it's negative or positive, but it is a discriminating type decision, in the generic sense of the word?

The Witness: Right, as a practical matter.

The Court: Without attempting to characterize it as evil or bad, it is an action based upon recognition of color, in this instance?

The Witness: Yes, sir.

The Court: Or sex or national origin or religion, or some other basis for which negative discrimination has been prohibited by law?

The Witness: Right.

The Court: Now, you have indicated that this concept of affirmative action, and inherent in that, if I may [131] call it reverse discrimination without in any way implying that it's evil, had its genesis in Executive Orders, as far as you know?

The Witness: Yes.

The Court: And I think you testified that, at least according to your understanding, various court decisions have encompassed that concept, insofar as imposing sanctions upon companies or industries?

The Witness: That's right.

The Court: Have you ever made any studies to determine whether the Congress had passed any legislation permitting or authorizing discrimination against individuals in order to carry out affirmative action plans?

The Witness: Well, I have done much reading over periods of time, some of which, I guess, I retained, and some I haven't, as to the intent of Congress and the supportive legislation, or the legislation in the Civil Rights area.

The Court: Well, have you found, or have any of your legal advisors shown you Congressional acts to support discrimination when carried out pursuant to a plan of affirmative action?

The Witness: I would have to say no, if I understand your question correctly.

[132] The Court: Have you considered, in connection with the concept of affirmative action, which developed prior to the 1964 Civil Rights Act, and in connection with your study of it, have you considered whether the Congress, by virtue of the passage of the 1964 Civil Rights Act, deprived individuals of liberties to discriminate in pursuance of what they considered to be worthy causes, such as affirmative action, by virtue of their broad and sweeping prohibition against discrimination against individuals on race or for any reason?

The Witness: I understand your question to be, have I considered the fact that the Civil Rights Act prohibits the privilege of discriminating?

The Court: For what would be considered a worthy purpose, prior to the passage of that Act, has that been considered or taken into account in your decision with regard to implementation of plans subsequent to 1964?

The Witness: What we were talking about earlier, of reverse discrimination, has inevitably permeated the thinking of discussions, when one gets into the concepts of affirmative action plans, by anybody in the business that has to deal with that. I think that the professionals, I use that term in reference [133] to people who have worked in this area for extended periods of time, were cognizant of that issue, but I think the practical evidence from the Government agencies with whom industry had to deal, I think my impression of the court decisions, I can find no serious conflict in it, between the objective of the Civil Rights Act and the objective of affirmative action. I think they run in tandem.

The Court: You're saying, in effect, that based upon expressions by Governmental agencies, the hidden Government, as its been referred to, I think, by many individuals,

and by the handwriting on the wall, if I may characterize what you have referred to as what the courts have done, you have considered that that really has been your motivating factor in determining what steps to take with regard to affirmative action, and that you have considered the general purpose of the Civil Rights Act passed by the Congress to be consistent, or these actions to be consistent with the general purpose of the Civil Rights Act?

The Witness: In my opinion, the concepts of affirmative action are consistent with the Civil Rights Act. I think had the Civil Rights Act been passed with the hindsight of the last ten years, the Act, in my [134] opinion, would have encompassed the full concepts of affirmative action. In fact, the EEOC, in carrying out their responsibilities under the Civil Rights Act, deal with the concept of affirmative action in agreements they seek to obtain from employers. I think the advent of Executive Order 11246, and the subsequent regulations, and the history of the last ten years, are not inconsistent with the fundamental intent of the Civil Rights Act. As a pragmatic thing to say, if all the Civil Rights Act said—maybe I shouldn't get into this kind of dialogue, but if all the Civil Rights Act said, "From henceforth there will be discrimination", it would have been a hollow kind of a thing, because so much of the discrimination was systemic. The system had to be changed.

The Court: Was the Civil Rights Act, as you understand it, designed to promote affirmative action, or to prevent discrimination?

The Witness: I suppose I'm getting out of my ballpark here.

The Court: If you are, I assumed you were an expert in the field, to the extent of your position.

The Witness: I think I'm an expert in the field of affirmative action. I'm not an expert in interpreting [135] the intent of the Civil Rights Act.

The Court: I'm not trying to get you in any pitfalls, I'm concerned about the dichotomy, and I thought perhaps you might be able to give meaningful assistance. On the other hand, if you feel that I'm asking you questions that go beyond your expertise, I would appreciate your telling me.

The Witness: It's opinion on my part. I think the Civil Rights Act was passed to prevent discrimination in a number of areas, one of which was employment.

The Court: Frankly, I'm concerned. Perhaps if I explain my concern. I find that the Act is rather clear and specific in prohibiting discrimination against individuals, particularly on the basis of race, and particularly in on-the-job training programs such as this, and I'm just curious as to why those who have been in charge of companies' programs, such as you, attempting to comply with what I'm sure is a plethora of pressure from many sides and do the right thing, and I'm just curious how, in resolving these various conflicts, the rather clear language of the Congress has been reconciled with these actions, if it has been reconciled. Frankly, I'm looking for guidance when I asked you that question, if there has been any reconciliation. If, [136] on the other hand, it has been ignored, simply because the pressures from other Governmental agencies, or the desire to do what you felt was right was considered paramount and consistent with what you consider the general purpose of the Civil Rights Act, then I would like to know that. In other words, I'm trying to find out whether there was an attempt to evade the Civil Rights Act, as written by Congress, or whether there was an attempt to do what many considered the right thing. Now, if I'm over-generalizing, please don't answer the question. It appears to me to be a dichotomy which goes to the very thrust, to the very heart of this problem, and to the fullest extent possible, I would like to give you and all the parties an opportunity to ventilate it.

The Witness: I don't have any problem attempting to respond to that. I don't believe there has been a more changing field of activity in this country today than the impact that's occurred in the employment field as a result of affirmative action. My personal opinion is that when the Civil Rights Act was passed, that the collective intelligence, the collective information of the effects of employment discrimination, and the changes that would inevitably [137] occur, were probably, in my opinion, not considered in depth. I don't think there has been the kind of exploration into the subject that has occurred in the last ten years by many, many organizations, industries, Government, courts, educators, etcetera. It has been a growing revelation, I guess. I don't think, in response, that the pressures, per se, of the Federal agencies responsible, say, for compliance, have brought industry to their knees and forced them to do things that they didn't think, in their good judgment, were appropriate responsibilities on their part. I think it's been a learning, growing process. I find it difficult, as a person having been involved in it, to reach back and seize some language to defeat the concepts of affirmative action. I don't think that would be consistent with the whole thrust of the Civil Rights Act.

The Court: You're saying, in effect, that the Civil Rights Act needs amending?

The Witness: I think if that point needs to be cleared up, it needs amending, yes. I think there has been a total new awareness on the part of many, many people. I spend a lot of time within my corporation going around and talking with our employees about this subject. To that extent, I'm the in-house [138] advocate, and I find, as time goes by, with a broader understanding of the issues, the acceptability of affirmative action concepts gains a higher level all the time, I think. People who are in the employment scene are beginning to intellectually accept some

of the concepts of affirmative action that might not have been acceptable eight years ago, or nine years ago, or five years ago.

The Court: All right, sir. Thank you very much. I have enjoyed the questioning with you and find it helpful.

Gentlemen, if I have raised any areas you wish to pursue, I'll give you an opportunity to cross-examine the witness further.

Mr. Fontham: Your Honor, I have no further questions of this witness.

The Court: I think, in any event, Mr. Middleton has not had the opportunity to redirect.

Mr. Middleton: I don't believe I have anything else. I think most of the points about which he's thoroughly acquainted and some he isn't have been thoroughly explored.

Mr. Falkenberry: I don't have anything else of Mr. Bouble.

The Court: You're excused.

[139] (Witness excused.)

The Court: Any further evidence, gentlemen?

Mr. Middleton: Your Honor, that's all we planned.

Mr. Falkenberry: We have no more.

The Court: Any rebuttal?

Mr. Fontham: No, Your Honor.

The Court: Any motions to be made at the conclusion of all evidence?

All right, gentlemen, in accordance with our prior understanding at the pre-trial conference, the Court will give counsel an opportunity to brief the issues. It's true that

Mr. Fontham, in behalf of the Plaintiff, has filed a Pre-Trial Memorandum, and that the Union has filed a Pre-Trial Memorandum, which I just received this morning and really haven't had an opportunity to do anything other than scan it most hastily. For some reason, it was not delivered to my office until late yesterday.

Mr. Falkenberry: Yes, Your Honor.

The Court: So, I really haven't had a chance to review it, and Mr. Middleton, of course, relying upon our assertion, was waiting until after the hearing.

Let me ask you, first, in arriving at a timetable, gentlemen, because I recognize that this matter can be of substantial importance to you, [140] whether you feel you want to have a transcript as a prerequisite to preparation of briefs? Ordinarily, I don't favor delays for a transcript. I do think my reporter could probably get a transcript out in a relatively short period of time. I assume that the case may have to have a transcript ultimately.

Mr. Fontham: Your Honor, the Plaintiff has no need of a transcript, mainly because we have stipulated so many of the basic facts, that I really think that much of the testimony was sort of incidental. But I don't have any need of one prior to filing a brief.

Mr. Middleton: Your Honor, that's kind of my general feeling. I think we have got, really, absent the testimony, practically speaking, enough stipulated pleaded facts to pretty well crystalize most of the legal issues involved.

The Court: Well, in a vacuum, I think that may be true. Personally, gentlemen, considering the rather significant social importance of the problem, to approach it from a pure, hard fact statistical basis may not provide adequate basis for consideration. I'll leave it up to you. I was going to say, I think that I would certainly give you time to get

a transcript if you wanted that opportunity to do so. If you don't feel you need it, then it's solely up to you.

[141] Mr. Middleton: Frankly, one thing I had in mind—

The Court: I don't want to cause the parties to go to an expense of a transcript if it isn't necessary. On the other hand, I can foresee that there may be one required ultimately, in any event.

Mr. Middleton: I feel sure there will be, if it please the Court.

The Court: Regardless.

Mr. Middleton: One thing about the transcript, we've got the Bar trip looming not too far off. I was fearful that by the time we get the transcript and then work on the brief, we would be needing to finish it by the time we might not be here, and I would go ahead and try to get that taken care of prior to May 1st.

The Court: All right. Gentlemen, let me tell you, generally, if you haven't already perceived the problems as I view them, based upon the study that I have made, the evidence that I have seen in this case, so that you may address yourselves to them. I don't mean to over-simplify the problem, but I think it is susceptible to simplification and I do think it has rather broad ramifications for the nation. It appears to me that we have the rather positive language of the Civil Rights Act, prohibiting [142] any discrimination, albeit benign or benevolent. It further appears from Congressional history that's been cited to me by Mr. Fontham, maybe there are others not cited to me, that the Congress, in enacting the Civil Rights Act of 1964, specifically considered this problem and concluded that it was not licensing what one might call reverse discrimination. It appears to me, therefore, we're faced with the problem of whether national policy with regard to affirmative action, if you wish to call it that, benign or benevolent discrimination, if you wish to call it that, should

be made, on the one hand, by the elected representatives of the citizens, that is, the Congress, or on the other hand, by the invisible Government in the form of agency representatives, or bureaucrats, as they're frequently referred to, or even worse, or better, depending upon one's point of view, by tenured Judges who have no one to answer to, other than their consciences. If the Civil Rights Act needs to be amended to permit affirmative action and if affirmative action is a national policy, it occurs to me that a very strong and persuasive argument can be made for the proposition that it should be done by that branch of our Government which is now endowed with responsibility [143] of establishing a national direction, and not by tenured individuals, such as Federal Judges. Therefore, I have great difficulty in reconciling the fallouts of affirmative action programs with the rather clear and express mandates prohibiting discrimination in the 1964 Act, and that, in substance, and simply stated, gentlemen, are the issues that I think you need to direct yourselves to in connection with memoranda that you are going to submit to me for my decision in this case. I don't know that the issue has been fairly faced in the light that I view it, at this time. I may change my mind, but it seems to me, as I have stated, it is who is going to make the national policy. Now, it's true that the courts have done this in other areas in pursuance of carrying out their duty to interpret the Constitution. Thus, we have instances where the same problem has been faced with Governmental bodies, where you were dealing with Constitutional questions, that is, the right of the Government to discriminate or not to discriminate, or to benevolently discriminate, by the courts in pursuance of their interpreting Constitutional requirements. Frankly, at this time, it seems to me that the Constitution is not the governing document, in view of the fact that we're dealing [144] with private individuals, but, rather, the various Civil Rights Acts. Of course, I've been talking about the Civil Rights Act of '64; I haven't even mentioned Section

1981 that did not come into vogue or popularity until after 1964, when someone neglected to file a suit within the prescriptive period provided by the 1964 Act. But in addition to the prohibitions against discrimination contained in the 1964 Act, we have the rather broad and sweeping prohibitions contained in Section 1981, which the courts have not hesitated to apply to discrimination which they have considered to be malignant, rather than benign. What is malignant and what is benign is subject to different interpretations, depending upon different views. My view, at this time, gentlemen, is that whether it's malignant or benign should be decided by the representatives of the people, as I say, not by tenured Judges.

Now, I haven't meant to pre-judge the case before you all have argued and I assure you that I haven't. It certainly presents many very difficult and broad problems. I have stated my general views of the problems and the issues, as I now see them, because I thought it might be helpful to counsel for all parties in their task of briefing the case.

[145] Now, with that in mind, and there indeed may be other things that I have not mentioned that you feel you should consider, I haven't meant to limit, in any way, your argument, but merely to give you some idea of the problems that I consider most paramount, based upon the evidence as I have heard it and the law that I have seen to this point, so, with that in mind, gentlemen, I'm receptive to such timetable for briefing as you feel is consistent with your schedules and an opportunity to cover completely the significant factors. I say to cover completely, because I don't know how much work you have to do with regard to Congressional history. I don't know how much you have already done. I do know that frequently, for my own problems, frequently because of lack of Government depositories in this area, the Fifth Circuit library, for example, has only been a depository for Government docu-

ments for the last two or three years, I have gone to Washington to get Congressional history and committee reports and what not, and gone back this far, and sometimes it takes me quite a long time to get documents that I'm looking for, and I presume you may have the same problems. So, I would like to have it handled as promptly as possible, consistent [146] with an opportunity for thoroughness. So, if you would like to reflect, or talk amongst yourselves for a few minutes concerning scheduling, I'll be happy to let you all set the timetable that you feel is appropriate. I know none of you wish to delay the matter and, therefore, I'll defer to your judgment.

Mr. Middleton: Judge, I think both of us feel we could file additional briefs on the thing by, say, the 1st of May, and then to the extent, in receipt of each other's, we may need to supplement or deal with something that was overlooked, or deal with some reply brief, whatever time Your Honor would like to allow after that would be appropriate.

The Court: All right. Let's provide for filing of simultaneous briefs by all parties not later than May 1st, reserving the right to either side to file reply or rebuttal briefs by May 10, and, also, reserving the right of the parties to come in for extensions of their periods if for some reason they feel, unforeseen at this time, that such extensions would be in the interest of justice, so as to provide a thorough covering of the necessary material.

Gentlemen, I appreciate your cooperation and the highly professional way this has been handled, and if there is nothing further, the Court will [147] stand adjourned.

(Conclusion.)

[148]

The State of Texas

County of Potter

I, D. Trent Thurman, CSR, RPR and Notary Public in and for Potter County, Texas, do hereby certify that the above and foregoing pages contained a full, true and correct transcription of my shorthand notes taken upon the occasion set forth in the caption hereof, as reduced to typewriting by me or under my direction.

Witness my hand, this the 20 day of September, 1976.

/s/ D. Trent Thurman
D. Trent Thurman, CSR, RPR
Notary Public in and for
Potter County, Texas

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

(Title Omitted in Printing)

STIPULATION

Brian F. Weber, plaintiff, and Kaiser Aluminum & Chemical Corporation ("Kaiser") and United Steelworkers of America AFL-CIO (USWA), defendants, hereby stipulate the truth of the following facts for all purposes in this proceeding.

1.

Jurisdiction is conferred on this Court pursuant to 42 U.S.C. § 2000(e)-5(f)(3), 28 U.S.C. § 1343, and 28 U.S.C. §§ 2201 and 2202.

2.

Plaintiff, Mr. Weber, is now and has been since 1968 an employee of defendant, Kaiser, at the Gramercy, Louisiana Works, and a member of USWA, Local 5702.

3.

Defendant, Kaiser, is a corporation organized under the laws of the State of Delaware with its principal place of business in the State of California. Defendant, USWA, is a labor union. Kaiser is an employer in an industry affecting commerce and employs more than 15 persons. USWA is a labor organization engaged in an industry affecting commerce which has more than 15 members, and which is the certified representative of employees of Kaiser at the Gramercy Works pursuant to the National Labor Relations Act.

4.

On February 1, 1974, Kaiser and USWA entered into an agreement styled "1974 Labor Agreement" purporting to set forth "the basic agreement concerning rates of pay,

hours of work, and conditions of employment to be observed between the parties hereto with respect to the employees covered hereby and as hereafter defined." The agreement provides in part:

> It is further agreed that the Joint Committee will specifically review the minority representation in the existing Trade, Craft and Assigned Maintenance classifications, in the plants set forth below, and, where necessary, establish certain goals and time tables in order to achieve a desired minority ratio:
>
> [Gramercy Works listed, among others]
>
> As apprentice and craft jobs are to be filled, the contractual selection criteria shall be applied in reaching such goals; at a minimum, not less than one minority employee will enter for every non-minority employee entering until the goal is reached unless at a particular time there are insufficient available qualified minority candidates. . . .
>
> • • • • • • • • • • •
>
> The term "minority" as used herein shall be as defined in EEOC reporting requirements.

A "memorandum of understanding" was executed by Kaiser and USWA as a supplement to the 1974 Labor Agreement. The parties stipulate the authenticity of the 1974 Labor Agreement and memorandum of understanding, which are attached to this Stipulation.

5.

Prior to implementation of the new procedures provided for by the 1974 Labor Agreement, substantially all maintenance and craft personnel employed at Kaiser's Gramercy Works were obtained by the hire of persons qualified and trained in such crafts prior to employment by Kaiser.

The available supply of trained craft and trade personnel available for hire by the Company as new employees has been, and remains to the present time, almost entirely made up of white males.

A previous on-the-job training program in the "Carpenter-Painter" craft category was followed by the Company from 1964 until 1971 whereby employees, with a minimum of one year experience in this category, and who were physically qualified, were offered opportunities for on-the-job training as trainees in this craft. Openings were filled on a bid basis by the senior qualified bidder meeting the criteria set forth. Over the period of this program, only 11 employees entered this craft line, two of whom were black.

A previous on-the-job training program in the "General Repairman" category was followed by the Company from 1968 until 1971 whereby employees with a minimum of three year's experience in this category, and who were physically qualified, were offered opportunities for on-the-job training over a period of two years in this line. This program was modified in 1971 to offer employees with a minimum of two year's experience in this category, and who were physically qualified, on-the-job training over a period of three years in this line. The openings in this training program were filled on a bid basis by the senior qualified bidder meeting the criteria set forth. In this program, 13 trainees entered this line in 1969, 3 trainees entered the line in 1970, and one trainee entered the line in 1971. All of the trainees were white.

No other training programs were instituted by the Company between 1964 and February, 1974.

Despite the Company's training programs, it was still necessary to hire from outside the plant substantial numbers of trained craftsmen and maintenance workers. Vacancies in craft and maintenance positions were difficult or impossible to predict far enough in advance to allow on-

the-job training of employees to fill needed positions. Therefore, the vacancies were filled with personnel obtained outside the plant as the need arose.

6.

Under the "1974 Labor Agreement", a revised and expanded training program, for on-the-job training into crafts, was contemplated without requiring prior experience, based on seniority, but with the provision that at least half of the persons selected, for such training, would be members of minority groups. Under such provisions, bids were posted April 3, 1974, for trainees in the category of Instrument Repair, Electrician, and General Repairman. Following the terms of the "1974 Labor Agreement", one black and one white trainee were selected on the basis of their seniority, within respective groups of bidders from their race, for the Instrument Repair training; two trainees were selected, one black and one white, for training in the Electrician category in accordance with the relative seniority within their respective groups of bidders by race; similarly, five trainees were selected for on-the-job training as General Repairman, three blacks and two whites on the basis of their respective seniority by race. In each instance, one or more white employees, not selected, were more senior than one or more of the black employees selected of the above three on-the-job training programs. On May 7, 1974, a bid sheet was posted for training in the category of Air Conditioning Mechanic in connection with which bidders were restricted to the white race and the successful bidder was the senior white bidder, such that of the four training programs theretofore bid, ten trainees were selected, five white and five black. On October 15, 1974, additional bids were posted for on-the-job training programs in the category of Carpenter and Insulator; two trainees were selected for the Carpenter on-the-job training program, one black and one white, being the most senior successful bidders of their respective races for said program; only one

trainee was selected for the Insulator training and the senior black bidder was selected. Bids had therefore been posted in six different craft categories, since institution of the program under the "1974 Labor Agreement" for the selection of thirteen trainees and of those selected, six have been white and seven have been black.

In each instance, with the exception of the bids for one position as Air Conditioning Mechanic, which was restricted to white bidders only, successful black bidders were junior in seniority to one or more white bidders, who bid unsuccessfully for said position.

With respect to each training program, the seniority of bidders is determined on the basis of their length of employment at the plant and is not affected by departmental or job seniority. All workers at the plant are included in this seniority line.

7.

Mr. Weber and/or other members of the class have applied for each of the 6 training programs posted for bidding since February 1, 1974. However, members of minority groups with less seniority than Mr. Weber and/or other members of the class were selected by defendant Kaiser for these programs, to meet the established quota of at least 50% minority representation as provided for in the 1974 Labor Agreement and Memorandum of Understanding.

8.

The length of craft training programs varies between two and a half and three and a half years, based on the training required in each, following which a trainee successfully completing training would become qualified as the junior man in his particular craft for purposes of lay off, promotion, overtime, and any other advantages. Pay rates for crafts are in general higher than a majority of other jobs at the plant from which prospective bidders may come

and such jobs are considered desirable and advantageous for financial, job security and other reasons. Not all bidders, however, are genuinely interested in securing the training positions as demonstrated by the fact that, in 5 of 6 training programs on which bids were received, eligible employees, more senior than those actually selected, declined the opportunity to enter the training program when offered to them.

9.

Neither the State of Louisiana nor the Town of Gramercy has a law prohibiting discrimination in employment on grounds of race.

10.

The parties stipulate the authenticity and admissability of the following exhibits, copies of which are attached hereto:

Joint Exhibit #1: Excerpts from 1974 Labor Agreement.

Joint Exhibit #2: Copy of Memorandum of Understanding.

Joint Exhibit #3: Bid lists on each of the 6 training programs.

Kaiser Exhibit 1: Craft Families, February, 1975, Kaiser, Gramercy.

Kaiser Exhibit 2: Trainees selected, craft training programs, since February 1, 1974, Kaiser Gramercy Plant.

Kaiser Exhibit 3: Craft employees, Kaiser Gramercy, 1972-1974.

Kaiser Exhibit 4: Report letter (with attached chart) required by Memorandum of Understanding, DEE to Company and Union Representative, dated February 6, 1975.

/s/ MICHAEL R. FONTHAM
Michael R. Fontham
STONE, PIGMAN, WALTHER, WITTMANN & HUTCHINSON
1000 Whitney Bank Building
New Orleans, La. 70130
Phone: 504/581-3200

Attorneys for Brian F. Weber

/s/ F.W. MIDDLETON, JR.
F.W. Middleton, Jr.
TAYLOR, PORTER, BROOKS & PHILLIPS
P.O. Box 2471
Baton Rouge, La. 70821
Phone: 504/387-3221

Attorneys for Kaiser

/s/ JOHN C. FALKENBERRY
John C. Falkenberry
COOPER, MITCH & CRAWFORD
409 North 21st Street
Birmingham, Al. 35203
Phone: 205/328-9576

Attorneys for USWA

/s/ JERRY L. GARDNER, JR.
Jerry L. Gardner, Jr.
DODD, BARKER, BOUDREAUX, LAMY & GARDNER
1400 Richards Building, 837 Gravier St.
New Orleans, La. 70112
Phone: 504/586-9395

Attorneys for USWA

JOINT EXHIBIT #1: EXCERPTS FROM 1974 LABOR AGREEMENT

AGREEMENT

between

KAISER ALUMINUM & CHEMICAL CORPORATION

Bay Minette Works	Newark Works
Belpre Works	Norco Works
Chalmette Works	Ravenswood Works
Dolton Works	Spokane (Culvert) Works
Gramercy Works	Tacoma Works
Halethorpe Works	Toledo Works
Mead Works	Trentwood Works

Vancouver Works

and

UNITED STEELWORKERS OF AMERICA AFL-CIO

Local 6632	Local 341
Local 5648	Local 5702
Local 13000	Local 5668
Local 5124	Local 338
Local 5702	Local 7945
Local 4599	Local 7238
Local 329	Local 338

Local 6419

FEBRUARY 1, 1974

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4. Supplemental Memorandum

As an integral part of 1974 Negotiations, the parties have noted that litigation is pending which may have some bearing on employment conditions for female and minority employees in the bargaining unit. Finally, the parties have considered the impact on seniority systems and job security that technological developments, environmental and economic controls, and widely fluctuating business conditions have had and may continue to have on each employee in the bargaining unit.

By reason of these considerations, the parties have agreed to incorporate into the 1974 settlement this supplemental agreement which will enable the parties quickly and effectively to make adjustments or revisions in their seniority and selection practices when judicial decisions dictate such action is necessary. This supplemental agreement will make it possible for the parties to relate such adjustments or revisions to the circumstances prevailing at the time such action is taken and to the conditions then existing at each location.

A variety of remedial measures may be required by these federal court decisions. In order that both members of the bargaining unit and local management may be made aware of what the courts have required, we cite below some remedial measures which may be implemented through

mutual agreement if necessary to assure continued compliance with the Acts.

Special Interdepartmental Transfer Opportunities

Where female and minority employees have been concentrated into certain departments by reason of hiring procedures, steps must be taken to eliminate any existing "lock in" effect as defined by federal judicial decisions arising under the Civil Rights Acts. An appropriate technique for remedying such situations is to provide an opportunity for employees to transfer out of such departments on the basis of plant seniority and proper ability criteria, provided that such transferring employees are afforded the opportunity to carry their seniority to their new departments so that they are able to reach job classifications in their new departments which are generally commensurate with their prior service.

In such cases employees should not be deterred from exercising a special interdepartmental transfer opportunity because the wage rate paid in the job classification they would enter in the new department is lower than the wage rate for the job classification from which they would transfer. The solution to this problem is to develop rate retention procedures which can be used to remedy or avoid such situations.

Job Vacancy Filling in the New Department

Procedures must be negotiated which will provide female and minority employees exercising a special interdepartmental transfer opportunity with the plant and departmental seniority necessary to place them in a proper relationship to employees already in the new department for such matters as bidding, recall, layoff, and demotion rights. If any existing line of progression does not satisfy this requirement, it would have to be restructured.

New Bargaining Unit Employees

Methods by which new employees are assigned in the bargaining unit must be reviewed with respect to their effect upon employment opportunities and, where necessary, must be revised so as to effectuate the purposes of this supplemental agreement.

Trade, Craft and Assigned Maintenance Classifications

It is further agreed that the Joint Committee will specifically review the minority representation in the existing Trade, Craft and Assigned Maintenance classifications in the plants set forth below, and, where necessary, establish certain goals and time tables in order to achieve a desired minority ratio:

Bay Minette Works
Belpre Works
Chalmette Works
Dolton Works
Gramercy Works
Halethorpe Works
Mead Works
Newark Works
Norco Works
Ravenswood Works
Spokane (Culvert) Works
Tacoma Works
Toledo Works
Trentwood Works
Vancouver Works

As apprentice and craft jobs are to be filled, the contractual selection criteria shall be applied in reaching such goals; at a minimum, not less than one minority employee will enter for every non-minority employee entering until the goal is reached unless at a particular time there are insufficient available qualified minority candidates. Additional goals will be set for the utilization of female employees in Trade, Craft and Assigned Maintenance classifications.

The committee provided below is empowered to revise both the goals and methods if this is found necessary.

The term "minority" as used herein shall be as defined in EEOC reporting requirements.

Implementation by Joint Committee

A Joint Committee shall be established by the International Union and the Company with authority to make the necessary revisions to accomplish the above stated provisions no later than September 15, 1974. Such Joint Committee shall also provide for appropriate implementing procedures and personnel. The possible courses of remedial action set forth above are illustrative of those available to the Joint Committee. The Joint Committee may adopt additional courses of remedial action or modify those illustrated. Questions concerning interpretation of this supplemental agreement may be referred to the Joint Committee by the parties.

JOINT EXHIBIT #2: COPY OF MEMORANDUM OF UNDERSTANDING

In compliance with Article 9, Supplemental Agreement of the Master Labor Agreement, the Joint Implementation Committee has met to resolve possible inconsistencies with Government and judicial decisions.

It is understood that this Agreement does not constitute an admission by the parties of any violation of Title VII of the Civil Rights Act or Executive Order 11246 and is entered into voluntarily in order to:

1. Confirm the parties' policy and practice of providing equal employment opportunity for all persons without regard to race, color, religion, sex, age, or national origin.
2. Affirm that it is, has been, and will be the policy and the commitment of the parties to fully comply with both the letter and the spirit of Title VII of the Civil Rights Act and Executive Order 11246.

Special Interdepartmental Transfer Opportunities

As agreed to in the 1974 Master Aluminum and Can and Container Labor Agreements, the Joint Company-Union Implementation Committee has reviewed and/or visited all of the plant sites covered by said Agreements with respect to the impact, if any, that past or present job placement and/or seniority practices might have on the minority and female employees in the respective bargaining units. As a result of this study, the Joint Committee has concluded that there presently exists two plants with an alleged affected class of female employees.

The Joint Committee further agreed that, although there is evidence reflecting that certain changes or practices were effected during the last several years to correct the alleged problems in these locations, in order to assure that there are in fact no lingering effects of any supposed past dis-

crimination and to assure continued compliance in accordance with recent Government decrees and court decisions, the following steps will be implemented by the parties to said Agreements.

TRENTWOOD—CLERICAL & TECHNICAL

I. The following is a list by department of jobs that females have arguably been denied the right to bid upon for various reasons.

Shipping and Traffic Department

Shift Leader, Job Class 12
Shipping Coordinator, Job Class 10

Mill Customer Service

Special Fabricating Controller, Job Class 11
Mill Loading Controller, Job Class 11
Metal Coordinator, Job Class 11
Planning Dispatcher, Job Class 7

General Services

Multigraph Operator, Job Class 4
Mail Room Messenger, Job Class 2

Physical Testing Lab

Senior Machine Operator, Job Class 7
Special Metallographic Analyst, Job Class 7
Metal Finishing Technician, Job Class 7
Special Machine Operator, Job Class 6

Cost Time Office

Cost Time Clerk Leader, Job Class 5

Maintenance Planning

Maintenance Area Planner, Job Class 12

II. In order to accomplish, as quickly as possible, the aforementioned objectives, the Joint Implementation Committee has agreed to the following procedures to allow the females listed on Addendum A in the Trentwood C & T unit the opportunity to, upon their own volition, move into the enumerated positions which opportunity was arguably denied them in the past.

1. The date of entry into the C & T unit (hereinafter known as C & T unit seniority) shall be used for all purposes instead of the line of progression, and department seniority presently in use.

2. The change to C & T unit seniority shall not change the relative positions of any employee within a department or line of progression. In other words, there shall be no "bumping" as a result of the change to C & T unit seniority.

3. All future promotions, demotions, layoffs, recalls, and other practices in which seniority is used shall be in accordance with C & T unit seniority. The existing lines of progression shall be maintained.

4. Females may exercise their C & T unit seniority to bid into any of the jobs listed in Section I, when there is a permanent vacancy. The females will compete for the listed job on the basis of C & T unit seniority with all other females (regardless of what department they are presently in) as well as with those employees presently in the job from which the vacancy would normally be filled. Such *preferential bidding* for the females may be accomplished only under the following conditions:

   A. The vacancy must be of an equal or higher job class than the employee's present job class.

   B. Once such a bid, as has been described in paragraph 4 above has been effectuated, all future bids by that female in that line of progression

and department would be governed by C & T unit seniority, and she will have exhausted her *preferential bid rights.*

C. Should a female, after exercising her *preferential right to bid,* be disqualified or disqualify herself during the trial period, she shall return to her original job and will be allowed to exercise her *preferential bidding rights* one more time.

D. Females who exercise their *preferential bidding rights* will have a 45 day trial period that may be extended upon mutual agreement of the parties.

E. Females will receive the same training and trial period if demoted as they would have received had they bid to the job.

F. Should any female elect not to bid on any permanent vacancy listed in Section I that is equal to or higher than her present job grade, she shall have waived any future *preferential rights to bid* permanent vacancies in that particular job.

G. Each female will designate any departments that she would not desire to utilize her *preferential bidding rights* and sign the appropriate waiver with copies to the Local Union President, Staff Representative, and Chairman of the Joint Implementation Committee.

RAVENSWOOD

In order to accomplish, as quickly as possible, the aforementioned objectives, as outlined on page 1 of this Agreement, the Joint Implementation Committee has agreed to the following procedures to allow the females in the Ravenswood Technical Department, as listed on Addendum B, the

opportunity to, upon their own volition, move into the positions which opportunity was arguably denied them in the past.

1. The females in the Technical Department may exercise their plant seniority to bid into any permanent vacancy, except the operator job where operator/assistant operator relationships exist, in any department. They will compete for the job on the basis of plant seniority with all other females in the Technical Department, as well as those employees presently in the department from which the vacancy would normally be filled. Such *preferential bidding* for the females in the Technical Department may be accomplished only under the following conditions:

   A. The job vacancy must be of an equal or higher job class than the employee's present job class and once such a bid has been effectuated, any future bid would be governed by the present plant seniority system.

   B. Females in the Technical Department who exercise their *preferential bidding rights* will have a 45 day trial period that may be extended upon mutual agreement of the parties.

   C. Should a female in the Technical Department, after exercising her *preferential bidding rights,* be disqualified or disqualify herself during the trial period, she shall return to her original job and will be allowed to exercise her *preferential bidding rights* one more time.

   D. Should any female in the Technical Department elect not to bid on any permanent vacancy in another department that is equal to or higher than her present job class, she shall waive any future *preferential rights* to bid permanent vacancies in that job.

E. Each female in the Technical Department will designate any departments that she would not desire to utilize her *preferential bidding rights* and sign the appropriate waiver.

As a result of this Agreement, Trentwood Clerical & Technical and Ravenswood must establish local plant implementation committees. These committees shall consist of the Union President, the Chairman of the Grievance Committee, a representative of the International Union, and one female listed in Addendum A or B designated by the Local Union President and/or representative of the International Union, and the Industrial Relations Superintendent, the Assistant Industrial Relations Superintendent, or Supervisor of Labor Relations, the Works Manager or designee, and an exempt female for the Company.

In doing such, the plant committees will develop programs to insure that all females as identified on Addendums A and B are made fully aware of the rights, provided for them by this Agreement.

The Plant Implementation Committees will report in writing prior to February 7, 1975 to the Chairmen of the Joint Implementation Committee or their designee on their plan to execute this Agreement. Once the Local Plant Committee reports and the Joint Implementation Committee *approves* such plan, the program must be implemented within 30 days.

Trade, Craft, and Assigned Maintenance Classifications

As agreed to in the 1974 Master Aluminum and Can and Container Labor Agreements negotiations, the Joint Company-Union Implementation Committee has reviewed all of the existing Trade, Craft, and Assigned Maintenance classifications with respect to their representation of minority and female employees. Said review has determined that, notwithstanding the efforts made by the Company and the

Union and/or the gains made via the Company's various Affirmative Action Plans per E.O. 11246, such representation must be increased in order to assure full compliance with the standards presently being enunciated by the Government and recent court decisions. Consequently, based upon the aforementioned conclusion the parties have agreed to the implementation of the following steps to achieve their desired objective.

1. As Trade, Craft, and Assigned Maintenance Jobs are to be filled, the contractual selection criteria shall be applied in reaching such goals; at a minimum, not less than one minority or female employee will enter for every non-minority employee entering, including, if necessary, off the street hires, until the goal is reached unless at a particular time there are insufficient available qualified minority and/or female candidates.

2. Using recent Federal Court Guidelines, the Trade, Craft, and Assigned Maintenance classifications have been grouped into families as per the attached Exhibit "A". The percentage representation of minorities that must be represented in each "craft family" for each plant is also attached as Exhibit "B". The percentage of females represented in each craft family will be 5%. This represents the parties' best estimate of the initial goals to be achieved, recognizing that these goals may change as future court/Government decisions are rendered.

3. As on-the-job training and/or apprentice programs are established, each training class entering will be filled on a 50-50 basis. Employees in each training class shall be selected on the basis of the existing practice in each plant, however, 50% of the training class will be composed of only minority and/or female employees, including, if necessary, off the street hires.

4. Once a minority or female employee completes a training program, his or her seniority shall conform to local plant practices.

5. Should there be a reduction in force of those in training programs, normal plant seniority practices will be maintained except that no more than 50% of those laid off in each training class will be minority or female.

The program set forth above should insure the continued compliance by the Company and the Union with the ever-changing status of the law in this area. The Company and Union representative for each plant will meet and jointly report, in writing, to the Chairmen of the Joint Implementation Committee or their designee by February 7, 1975 of their compliance with this Agreement.

Miscellaneous Transfer Opportunities

As agreed to in the 1974 Master Aluminum and Can and Container Labor Agreements negotiations, the Joint Company-Union Implementation Committee has reviewed all existing seniority practices with respect to their impact on minority and female employees. Consequently, based on the review by the parties, it has been agreed to implement the following steps to achieve the desired objectives.

1. At all plants, permanent vacancies in Trade, Craft, Assigned Maintenance, and Special Qualifications Jobs must be bid plant-wide before hiring from the outside.

2. At all plants, employees who are subject to a reduction in force, may exercise their plant seniority to "bump" an employee, who has less plant seniority and who is in the plant labor pool, or plant entry job where a plant labor pool does not exist, as outlined in Article 9 of the Master Aluminum and Can and Container Agreements.

3. Should Government-required hiring goals conflict with inter-plant job opportunities in Article 9 of the Master Labor Agreements, discussions will commence immediately between representatives of the Company and International Union as provided for in Article 9, Section N, paragraph 8.a.

The program set forth above should insure the continued compliance by the Company and the Union with the ever-changing status of the law in this area. The Company and Union representative for each plant will meet and jointly report, in writing, to the Chairmen of the Joint Implementation Committee or their designee by February 7, 1975 of their plan to execute this Agreement. Once the Plant Committee reports and the Joint Implementation Committee *approves* such plan, the program must be implemented within 30 days.

UNITED STEELWORKERS OF AMERICA
(Signatures are illegible)

KAISER ALUMINUM & CHEMICAL CORPORATION

(Signatures are illegible)

ADDENDUM "A"

TRENTWOOD C&T FEMALES
November 8, 1974

Badge No.	Name	Unit Seniority
1073	L. M. Matteson	8-5-46
1568	L. L. Shaw	8-12-46
1855	O. Schadewitz	8-26-46
2129	I. Hoidal	9-9-46
3648	V. F. Amundson	1-27-47
4517	D. Twohy	10-14-47
4578	R. M. Coffman	12-8-47
6549	F. S. Kleven	1-26-50
6893	J. H. Wilson	5-17-50
7295	M. L. Lewsi	9-18-50
7414	B. K. Morgan	1-9-51
8213	B. J. Martin	8-6-51
8235	D. J. McIntyre	11-5-51
8261	D. W. Mowrey	2-18-52
8271	B. M. Howe	3-10-52
8280	E. M. Willis	3-24-52
8903	C. M. Wozny	6-19-52
9074	M. L. Weis	11-12-52
9674	V. J. Mantese	4-20-53
10453	K. McMahon	4-12-54
10461	L. M. Trowbridge	5-3-54
10768	K. M. Williams	8-31-54
11513	D. O. Selzler	6-23-55
11809	B. I. Robertson	7-25-55
11571	E. A. Fleenor	8-11-55
11927	D. E. Lindblad	9-20-55
11876	A. E. Erickson	11-28-55
12072	M. L. Elliott	1-23-56
10469	P. R. Trunnels	3-13-56
12444	P. A. Schauer	4-16-56
12538	D. A. Pearson	5-22-56

Badge No.	Name	Unit Seniority
12749	M. E. Dodge	8-8-56
12784	C. M. Asher	8-27-56
13054	R. L. Grant	1-3-57
13058	D. G. Hoerner	1-14-57
13036	P. J. Thompson	3-14-57
13106	D. E. Anderson	5-27-57
7096	M. J. Weitze	6-5-57
9011	J. M. Falmo	8-6-58
296	E. S. Crane	6-16-61
1276	E. M. Walls	6-16-61
2709	J. C. Casey	6-16-61
3379	V. D. Welch	6-16-61
6433	B. C. Barron	6-16-61
6520	M. E. Lafferty	6-16-61
8246	A. C. Wallin	6-16-61
8248	C. L. Muncy	6-16-61
8273	B. I. Holcomb	6-16-61
8435	L. B. George	6-16-61
8630	D. L. Jimeson	6-16-61
9080	M. J. Scarpelli	6-16-61
9720	D. J. Holman	6-16-61
10810	M. E. Conger	6-16-61
11881	P. C. Hainline	6-16-61
12461	S. L. Coombs	6-16-61
12476	F. L. Roberts	6-16-61
12484	S. F. White	6-16-61
13086	B. L. Guindon	6-16-61
6815	H. P. Evans	5-23-62
4312	D. C. Rosenau	6-27-62
5970	C. E. Clift	1-24-63
7907	J. E. Lindholm	3-2-64
13297	R. E. Francis	3-2-64
13549	P. A. Nehrhood	3-2-64
13692	M. A. Fruin	4-22-64
13742	M. I. Wade	5-12-64

Badge No.	Name	Unit Seniority
13763	J. E. Brynildson	5-18-64
13038	J. A. Dillon	5-21-64
13935	A. M. Harris	5-18-65
14041	D. A. Anderson	7-2-65
14091	V. J. Ruggles	7-19-65
14103	J. M. Hanks	8-23-65
14571	K. N. Heidenreich	5-27-66
14664	D. L. Strait	6-13-66
14666	B. J. Taylor	6-13-66
14761	J. M. Hooper	8-8-66
14973	M. A. Lacaff	7-31-67
15183	P. W. Iverson	4-11-68
15408	F. J. Vannurden	5-13-68
15427	E. R. Van Slate	5-20-68
15461	B. J. Kane	5-27-68
15561	R. J. Triplett	7-8-68
15662	M. E. Robinson	2-10-69
15666	P. E. Lankford	3-31-69
15682	J. A. Kuntz	6-23-69
15765	J. M. Johnson	7-28-70
15766	N. A. Pickett	8-10-70
15826	D. E. Anderson	7-6-71
15827	M. V. Draper	7-6-71
16006	M. Stuart	6-19-72
16041	K. D. Larson	7-31-72
16055	D. M. Rush	8-8-72
15996	S. R. Perrenoud	9-26-72
16225	J. M. Ferryman	10-16-72
16362	J. L. Patterson	2-21-73
16408	L. M. Johnson	3-19-73
13764	S. A. Trapp	4-2-73
16454	K. M. Norman	4-2-73
16475	J. M. Smith	4-9-73
16537	V. L. Charbonneau	5-7-73
16554	M. E. Mitchell	5-21-73

Badge No.	Name	Unit Seniority
16555	J. C. Abrahamson	5-21-73
16620	L. M. Mort	6-20-73
16670	L. Hill	7-9-73
16260	G. J. Wayman	2-22-74
16938	S. R. Fowlkes	3-5-74
16942	J. L. Branda	4-3-74
16151	J. L. Babin	4-15-74
16347	P. A. Barr	4-15-74
16973	T. R. Jamme	4-23-74
16978	K. E. Landry	4-29-74
16980	T. E. Barner	5-6-74
16992	J. M. Cerna	5-20-74
17007	L. L. Griego	5-30-74
16016	D. J. Kilmartin	7-1-74
17047	V. L. Morse	7-22-74
17068	C. J. Quist	7-25-74
17110	T. I. Reichert	8-19-74

All employees with unit seniority date of 6-16-61 use this date for the purpose of bidding jobs within the plant, except those within the Physical Testing and Chem Labs. The list below shows the seniority dates these employees use when bidding within the Physical Testing and Chem Labs, as well as for benefits provided by the labor agreement.

296	E. S. Crane	6-27-46
1137	B. A. Couch	7-22-46
1276	E. M. Walls	7-29-46
2709	J. C. Casey	10-9-46
3379	V. D. Welch	11-25-46
6433	B. C. Barron	12-20-49
6520	M. E. Lafferty	12-29-49
8246	A. C. Wallin	12-26-51

Badge No.	Name	Unit Seniority
8248	C. L. Muncy	1-7-52
8273	B. I. Holcomb	3-14-52
8630	D. L. Jimeson	5-28-52
9080	M. J. Scarpelli	12-11-52
9720	D. J. Holman	4-27-53
10810	M. E. Conger	9-22-54
8435	L. B. George	7-1-55
11881	P. C. Hainline	8-16-55
12461	S. L. Coombs	4-9-56
12476	F. L. Roberts	4-16-56
12484	S. F. White	4-21-56
13086	B. L. Guindon	4-4-57

ADDENDUM "B"

RAVENSWOOD TECHNICAL DEPARTMENT FEMALES
November 8, 1974

Badge No.	Name	Plant Seniority
750	J. J. Hackney	3-5-57
1570	A. M. Brotherton	3-24-58
1998	E. C. Hart	7-28-58
2808	M. M. Skeens	5-18-59
3257	B. I. Simpkins	4-26-60
3963	C. M. Baltic	5-6-63
1909	G. M. Mealey	6-23-58
1017	L. M. Stethem	5-6-67
1103	J. Bailengee	7-2-57
1786	S. E. Neigler	5-14-58
2893	B. L. Mays	6-16-59
542	O. M. Priddy	2-4-57
1456	H. H. Brammer	1-2-58
1884	J. C. Cowan	6-11-58
2252	G. Y. Windle	9-10-58
2290	D. J. Roush	9-15-58
2481	R. A. Boyd	10-15-58
1775	D. F. Elicker	5-12-58

Exhibit "A"

The following is the grouping of KACC job families to comply with Federal Court Guidelines.

I

Hydraulic Specialist
Maintenance Mechanic
Pipe Fitter
Scale Repairer (Mechanical)
Refrigeration Specialist
General Repairer/ Mechanical

II

Repairer—Bench & Floor
Layout Maker

III

Bricklayer
Insulator
Painter
Sign Painter (Illustrator)
Welder
Garage Mechanic
Blacksmith
Carpenter
Mechanic—Heavy Mobile Equipment Operator
Diesel Mechanic

IV

Die Maker
Machinist
Toolmaker

V

Works Repairer
Works Repairer/Electronics
Electrician
Instrument Repairer
Meter & Relay Specialist or Electronic Repairer
General Repairer/Electrical
General Repairer—Mechanical/Electrical
Air Conditioning Specialist (Electrical)
Electric Truck Repairer
Scale—Printer Repairer (Electronics)

VI

Rigger
Sheet Metal Worker
Boilermaker

Trentwood C & T

Draftperson
Accountant
Computer Operator

Exhibit "B"

Percentage Representation In Each Craft Family

Plant	Minority
Bay Minette	16
Belpre	6
Chalmette	27
Dolton	17
Gramercy	39
Halethorpe	27
Houston	25
Jacksonville	21
L. A. Container	23
Edison	21
Mead	3
Newark	3
Norco	39
Ravenswood	1
Trentwood—P & M	3
Trentwood—C & T	3
Spokane Culvert	3
Toledo	10
Vancouver	5
Tacoma	6

JOINT EXHIBIT #3: BID LISTS ON EACH OF THE 6 TRAINING PROGRAMS

Posted for Bidding April 3, 1974

BIDDERS FOR *GENERAL REPAIRMEN* (Listed According to Seniority)

Name	*Badge No.*	*Race*	*Reason Not Selected*	*Rate of Pay*
Kesey, B.	2012	C	Physical limitations	4.655
Chapman, A.	2086	C	Declined the offer	5.306
Johnson, W.	2100	N	Declined the offer	5.957
Boudreaux, A.	2137	C	Disqualified	5.864
Picou, R.	2228	C	Selected for the program	5.678
Becnel, M.	2224	C	Selected for the program	5.957
Ocmand, G. A.	2249	C	Not enough seniority for the White %	5.585
Guidry, A.	2264	C	Ditto	4.655
Faucheux, E.	2406	C	"	5.585
Constant, P.	2460	C	"	4.562
Maurin, F. H.	2479	C	"	5.585
Cristina, V.	2485	C	"	5.864
Haydel, O. J.	2505	C	"	5.864
Small, M.	2542	C	"	5.120
Roussel, P.	2585	C	"	5.957
Kliebert, A. J.	2587	C	"	5.399
Oubre, J.	2593	C	"	5.864
Louque, P.	2647	C	"	5.492
Deroche, S. J.	2658	C	"	4.934
Poirrier, E.	2668	C	"	5.120
Luhe, L.	2671	C	"	5.655
Foret, K.	2694	C	"	5.306
Cambre, G.	2718	C	"	5.306
Traveler, W.	2722	N	Selected for the program	5.957
Keller, D.	2729	C	Not enough seniority for the White %	5.306
Rizzuto, J.	2730	C	Ditto	6.515
LeBlanc, J.	2740	C	"	5.306
Parrino, F. J.	2746	C	"	4.655
Duhe, M. P.	2749	C	"	4.655
Forsythe, W.	2760	C	"	5.399
Bergeron, L.	2783	C	"	5.306
Oswald, C.	2809	C	"	5.678
Guidry, G.	2847	C	"	5.678
Roussel, L.	2919	C	"	5.399
Monica, J.	2928	C	"	5.492

GENERAL REPAIRMEN *(Con't.)*

Name	*Badge No.*	*Race*	*Reason Not Selected*	*Rate of Pay*
Bourgeois, J.	2933	C	"	5.120
Duhe, V.	3001	C	"	5.492
LeBlanc, B.	3026	C	"	5.678
Stewart, J.	3030	N	Declined the offer	5.306
Bourgeois, G.	3037	C	Not enough seniority for White %	5.306
Cox, J.	3045	C	Ditto	5.957
Carter, R.	3046	N	Declined the offer	4.934
Breaud, K.	3048	C	Not enough seniority for White %	5.306
Weber, B.	3042	C	Ditto	5.678
Beadle, H.	3061	C	"	5.306
Belvin, N.	3062	N	Selected for the program	5.399
Jasmin, J.	3063	N	Selected for the program	5.492
Andermann, F.	3071	C	Not enough seniority for the White %	5.306
Gautreau, C.	3081	C	Ditto	5.399
Dennis, C.	3089	N	Not enough seniority for the Black %	5.399
Faucheux, V.	3093	C	Not enough seniority for the White %	5.678
Jacob, O.	3103	C	Ditto	5.213
Vicknair, H.	3152	C	"	5.306
Bordelon, V.	3154	C	"	5.306
Lowry, M.	3176	C	"	5.306
Malbrough, B.	3186	C	"	5.585
Whitney, P.	3244	C	"	5.585
Mitchell, R.	3247	N	Not enough seniority for the Black %	6.515
Roussel, M.	3249	C	Not enough seniority for the White %	4.655
Zeringue, P.	3251	C	Ditto	4.655
Deroche, G.	3255	C	"	5.585
Boudreaux, D.	3261	C	"	5.585
Toups, C. J.	3264	C	"	4.562
Roussel, D.	3267	C	"	4.562
Narcisse, F.	3270	N	Not enough seniority for the Black %	4.562
Melancon, D.	3287	C	Not enough seniority for the White %	4.562
Alexis, W.	3288	C	Ditto	4.655
Louque, M.	3292	C	"	4.562
Forsythe, L.	3314	C	"	4.655
Bourgeois, Jr. R.	3315	C	"	4.655
Troxclair, W.	3345	C	"	4.562

Posted for Bidding April 3, 1974

BIDDERS FOR *ELECTRICIAN* (Listed According to Seniority)

Name	*Badge No.*	*Race*	*Reason Not Selected*	*Rate of Pay*
Kesey, B.	2012	C	Physical limitation	5.492
St. Pierre, A.	2028	C	Declined the offer	5.771
Chapman, A.	2086	C	Selected for the program, Instrument Repair	5.306
Rome, Jean P.	2162	C	Selected for the program	5.120
Picou, R.	2228	C	Not enough seniority for the White %	5.678
Guidry, A.	2264	C	Ditto	4.655
Bourgeois, G.	2279	C	"	5.678
Faucheux, E.	2406	C	"	6.143
Constant, P.	2460	C	"	4.562
Maurin, F. H.	2479	C	"	5.585
Cristina, V.	2485	C	"	5.864
Montz, I.	2530	C	"	6.014
Small, M.	2542	C	"	5.120
Roussel, P.	2585	C	"	5.957
Kliebert, A. J.	2587	C	"	5.399
Oubre, J.	2593	C	"	5.864
Deroche, S. J.	2658	C	"	4.934
Poirrier, E.	2668	C	"	5.120
Duhe, L.	2671	C	"	4.655
Foret, K.	2694	C	"	5.306
Bergeron, J.	2701	C	"	5.306
Cembre, G.	2718	C	"	5.306
Triche, R.	2721	C	"	5.306
Keller, D.	2729	C	"	5.306
Parrino, F. J.	2746	C	"	4.655
Duhe, M. P.	2947	C	"	4.655
Bergeron, L.	2783	C	"	5.306
Guidry, G.	2847	C	"	5.678
St. Pierre, A.	2863	C	"	5.213
Roussel, L.	2919	C	"	5.399
Bourgeois, J.	2933	C	"	5.120
Nailor, J.	2979	N	Selected for the program	5.306
Farlough, J.	2981	N	Not enough seniority for the Black %	5.678
LeBlanc, B.	3026	C	Not enough seniority for the White %	5.678

ELECTRICIAN (Con't.)

Name	*Badge No.*	*Race*	*Reason Not Selected*	*Rate of Pay*
Stewart, J.	3030	N	Not enough seniority for the Black %	5.306
Bourgeois, G.	3037	C	Not enough seniority for the White %	5.306
Weber, B.	3042	C	Ditto	5.678
Cox, J.	3045	C	"	5.957
Carter, R.	3046	N	Not enough seniority for the Black %	4.934
Breaud, K.	3048	C	Not enough seniority for the White %	5.306
Brenn, A.	3049	C	Ditto	5.678
Beadle, H.	3061	C	"	5.306
Belvin, N.	3062	N	Not enough seniority for the Black %	5.399
Andermann, F.	3071	C	Not enough seniority for the White %	5.306
Dennis, C.	3089	N	Not enough seniority for the Black %	5.399
Faucheux, V.	3093	C	Not enough seniority for the White %	5.678
Bordelon, V.	3154	C	Ditto	5.306
Lowry, M.	3176	C	Not enough seniority for the White %	5.306
Malbrough, B.	3186	C	Ditto	5.585
Whitney, P.	3244	C	"	5.585
Roussel, M.	3249	C	"	4.655
Zeringue, P.	3251	C	"	4.655
Toups, C. J.	3264	C	"	4.562
Roussel, D.	4367	C	"	4.562

Posted for Bidding April 3, 1974

BIDDERS FOR *INSTRUMENT REPAIRERS* (Listed According to Seniority)

Name	*Badge No.*	*Race*	*Reason Not Selected*	*Rate of Pay*
Kesey, B.	2012	C	Physical limitation	4.655
St. Pierre, A.	2028	C	Refused	5.771
Gendrea, R.	2055	C	Refused	5.585
Chapman, A.	2086	C	Successful transfer	5.306
Johnson, W.	2100	N	Refused	5.957
Mitchell, R.	2109	C	Not enough seniority for white %	5.492
Rome, J.	2162	C	Ditto	5.120
Becnel, M.	2244	C	"	5.957
Picou, R.	2228	C	"	5.678
Guidry, A.	2264	C	"	4.655
Faucheux, E.	2406	C	"	5.585
Constant, P.	2460	C	"	4.562
Maurin, F.	2479	C	"	5.585
Christina, V.	2485	C	"	5.864
Small, M.	2542	C	"	5.120
Roussel, P.	2585	C	"	5.957
Kliebert, A. J.	2587	C	"	5.399
Oubre, J.	2593	C	"	5.864
Deroche, Jr. S.	2658	C	"	4.942
Poirrier, E.	2668	C	"	5.120
Duhe, L.	2671	C	"	5.655
Foret, K.	2694	C	"	5.306
Williamson, C.	2714	C	"	5.607
Cambre, G.	2718	C	"	5.306
Triche, R.	2721	C	"	5.132
Keller, D.	2729	C	"	5.306
Garon, R.	2744	C	"	4.562
Parrino, F.	2746	C	"	4.655
Duhe, M.	2749	C	"	4.655
Forsythe, W.	2760	C	"	5.399
Bergeron, L.	2783	C	"	5.306
Guidry, G.	2847	C	"	5.678
St. Pierre, A.	2863	C	"	5.227
Roussel, L.	2919	C	"	5.399
Monica, J.	2928	C	"	5.492
Bourgeois, J.	2933	C	"	5.120

INSTRUMENT REPAIRERS *(Con't.)*

Name	*Badge No.*	*Race*	*Reason Not Selected*	*Rate of Pay*
Nailor, J.	2979	N	Entered Electrical Training Program	5.306
Goudia, N.	2985	N	Successful transfer	5.678
LeBlanc, B.	3026	C	Not enough seniority for white %	5.678
Triplett, L.	3027	N	Not enough seniority for black %	5.678
Stewart, J.	3030	N	Ditto	5.306
Bourgeois, J.	3037	C	Not enough seniority for white %	5.306
Weber, B.	3042	C	Ditto	5.678
Cox, J. L.	3045	C	"	5.957
Carter, R.	3046	N	Not enough seniority for black %	4.934
Breaud, K.	3048	C	Not enough seniority for white %	5.306
Brenn, A.	3049	C	Ditto	5.678
Belvin, N.	3062	N	Not enough seniority for black %	5.399
Andermann, F.	3071	C	Not enough seniority for white %	5.306
Gauthreaux, C.	3081	C	Ditto	5.399
Dennis, C.	3089	N	Not enough seniority for black %	5.399

Posted for Bidding May 7, 1974

BIDDERS FOR *AIR CONDITIONING MECHANIC*

(Listed According to Seniority)

Name	*Badge No.*	*Race*	*Reason Not Selected*	*Rate of Pay*
Chapman, A.	2086	C	Declined the offer	5.306
Mitchell, R.	2109	C	Ditto	5.492
Keller, P.	2258	C	"	5.492
Bourgeois, G.	2279	C	Selected for the program	5.678
Faucheux, E.	2406	C	Not enough seniority for the White %	6.143
Maurin, F. H.	2479	C	Ditto	4.655
Poche, R.	2521	C	"	5.306
Roussel, P.	2585	C	"	5.957
Duhe, L.	2671	C	"	4.655
Cambre, G.	2718	C	"	5.306
Triche, F.	2721	C	"	5.306
Jasmin, A.	2725	N	Not enough seniority for the Black %	5.120
Parrino, F. J.	2746	C	Not enough seniority for the White %	4.655
Guidry, G.	2847	C	Ditto	5.771
Farlough, J.	2981	N	Not enough seniority for the Black %	5.678
Weber, B.	3042	C	Not enough seniority for the White %	5.678
Brenn, A.	3049	C	Ditto	5.678
Boudreaux, D.	3261	C	"	4.655
Toups, C. J.	3264	C	"	4.562
Troxclair, W.	3345	C	"	4.562

Posted for Bidding October 15, 1974

BIDDERS FOR *CARPENTER* (Listed According to Seniority)

Name	*Badge No.*	*Race*	*Reason Not Selected*	*Rate of Pay*
Guidry, A.	2264	C	Selected for the program	4.657
Maurin, F. H.	2479	C	Not enough seniority for White %	4.657
Duhe, L. H.	2671	C	Ditto	4.657
Parrino, F. J.	2746	C	"	4.657
Duhe, M.	2749	C	"	4.657
Bergeron, L.	2783	C	"	5.322
Triplett, L.	3027	N	Selected for the program	5.702
Stewart, J.	3030	N	Not enough seniority for Black %	5.322
Breaud, M.	3047	C	Not enough seniority for White %	5.322
Breaud, K.	3048	C	Ditto	5.322
Brenn, A. J.	3049	C	"	5.702
Abadie, A. J.	3069	C	"	5.702
Roger, W.	3074	C	"	4.657
Lemar, L.	3116	N	Not enough seniority for Black %	5.892
Jackson, R.	3190	N	Ditto	5.322
Roussel, M.	3249	C	Not enough seniority for White %	5.892
Toups, C. J.	3264	C	Ditto	5.322
Wiltz, C.	3278	N	Not enough seniority for Black %	5.322
Oubre, R.	3335	N	Ditto	4.942
St. Pierre, H.	3381	C	Not enough seniority for White %	4.562
Oubre, E.	3320	N	Not enough seniority for Black %	4.562

Posted for Bidding October 15, 1974

BIDDERS FOR *INSULATOR* (Listed According to Seniority)

Name	*Badge No.*	*Race*	*Reason Not Selected*	*Rate of Pay*
Mitchell, E.	2017	N	Declined the offer	5.512
Guidry, A.	2264	C	Only one Black employee selected for program	4.657
Maurin, F. H.	2479	C	Ditto	4.657
Duhe, J. W.	2671	C	"	4.657
Triche, R.	2721	C	"	5.322
Parrino, F. J.	2746	C	"	4.657
Bergeron, L.	2783	C	"	5.322
Johnson, R.	2936	N	Declined the offer	4.657
Triplett, L.	3027	N	Selected for the program	5.702
Stewart, J.	3030	C	Not enough seniority for the Black %	5.322
Breaud, M.	3047	C	Not enough seniority for the White %	5.322
Breaud, K.	3048	C	Ditto	5.322
Brenn, A. J.	3049	C	"	5.702
Abadie, A. J.	3069	C	"	5.702
Roger, W.	3074	C	"	4.657
Lemar, L.	3116	N	Not enough seniority for the Black %	5.892
Jackson, R.	3190	N	Ditto	5.322
Roussel, M.	3249	C	Not enough seniority for the White %	5.892
Wiltz, C.	3278	N	Not enough seniority for the Black %	5.322
Oubre, R.	3336	N	Ditto	4.942

KAISER EXHIBIT 1: CRAFT FAMILIES, FEBRUARY, 1975
KAISER GRAMERCY

CRAFT FAMILIES—FEBRUARY 1975
including New Trainees under 1974 Agree.

	Black	*White*	*Total*
GROUP I			
Gen. Repairmen	4	174	178
Air Cond. Rep.	0	5	5
	4	179	183
	(2.19%)		
GROUP III			
Insulator	1	7	8
Carpenter-Painter	5	25	30
Garage	1	8	9
	7	40	47
	(14.89%)		
GROUP IV			
Machinist	0	8	8
	(0%)		
GROUP V			
Electrician	1	31	32
Instr. & Elec. Repair	1	21	22
	2	52	54
	(3.70%)		
CRAFT TOTALS	13[1]	279[2]	292[3]
	(4.45%)		

[1] Includes 7 new trainees under 1974 program.

[2] Includes 6 new trainees under 1974 program.

[3] Includes 13 new trainees under 1974 program.

KAISER EXHIBIT 2: TRAINEES SELECTED, CRAFT TRAINING PROGRAMS, SINCE FEBRUARY 1, 1974, KAISER GRAMERCY PLANT

TRAINEES SELECTED—1974 PROGRAM

	Black	*White*	*Total*
BIDS POSTED APRIL 3, 1974			
Gen. Repairman (Gp. I)	3	2	5
Electrician (Gp. V)	1	1	2
Inst. Repair. (Gp. V)	1	1	2
Total Gp. I To Date	3	2	5
Total Gp. V To Date	2	2	4
Total All Gp. To Date	5	4	9
BID POSTED MAY 7, 1974			
Air Cond. Rep. (Gp. I)	0	1	1
Total Gp. I To Date	3	3	6
Total Gp. V To Date	2	2	4
Total All Gp. To Date	5	5	10
BIDS POSTED OCTOBER 15, 1974			
Carpenter (Gp. III)	1	1	2
Insulator (Gp. III)	1	0	1
Total Gp. I To Date	3	3	6
Total Gp. III To Date	2	1	3
Total Gp. V To Date	2	2	4
Total All Gp. To Date	7	6	13

KAISER EXHIBIT 3: CRAFT EMPLOYEES, KAISER GRAMERCY, 1972-74

GRAMERCY PLANT—CRAFT EMPLOYEES

	1972			1973			1974		
	B	W	Tot.	B	W	Tot.	B	W	Tot.
Gen. Repairmen	0	158	158	0	172	172	4	175	179
Air Cond. Rep.	0	3	3	0	3	3	0	5	5
Insulator	0	6	6	0	7	7	1	7	8
Carp.-Painter	4	25	29	4	25	29	5	25	30
Garage	1	8	9	1	8	9	1	8	9
Machinist	0	7	7	0	8	8	0	8	8
Electrician	0	25	25	0	26	26	1	31	32
Inst. & Elec. Rep.	0	20	20	0	19	19	1	21	22
TOTALS	5	252	257	5	268	273	13	280	293
		1.94%			1.83%			4.43%	

KAISER EXHIBIT 4: REPORT LETTER (WITH ATTACHED CHART) REQUIRED BY MEMORANDUM OF UNDERSTANDING, DEE TO COMPANY AND UNION REPRESENTATIVE, DATED FEBRUARY 6, 1975

KAISER
ALUMINUM

Kaiser Aluminum & Chemical Corporation

February 6, 1975

Mr. Harry Mayfield
Director, District 27, USWA
1330 Market Avenue, North
Canton, Ohio 44714

Mr. Larry Stewart
Vice President, Industrial Relations
Kaiser Aluminum & Chemical Corporation
300 Lakeside Drive
Oakland, California

Gentlemen:

Attached is the information requested during our New Orleans seniority meeting. The Gramercy plant has already implemented a 50-50 training program in six craft classifications; 13 male trainees, of which 7 are black, are currently participating. Our plans are to continue filling craft vacancies on a 50-50 basis through the training program, and when necessary from outside hire.

Training program vacancies will be awarded to white males by seniority on a 50% basis, and to black males and females by seniority on a 50% basis until we reach our percentage goal of 39%. Based upon the female compliment at that time, we will fill in additional vacancies with females until the 5% female goal is reached. This of course assumes that minorities and females are available and will be bidding on future vacancies.

Journeyman vacancies will also be bid on a 50-50 basis within the plant, and outside hires will be obtained on the same basis. Again, this assumes fully qualified black males and females are available.

Under the "Miscellaneous Transfer Opportunities" section, the Gramercy local seniority agreement is in compliance with paragraphs 1 and 2.

Also, in reference to Tom Connor's memo of 1/30/75, Gramercy reports no problems in implementing our plans as described above.

/s/ D. E. ENGLISH
D. E. English
Industrial Relations Superintendent

/s/ PETE ROUSSEL
Pete Roussel
Local 5702 President

Enclosure

GRAMERCY WORKS

CRAFT FAMILIES

GROUP #1

	Minority Male	*Minority Female*	*Caucasian Male*	*Caucasian Female*
General Repairer	4	0	174	0
Air Conditioning Rep.	0	0	5	0
Total	4		179	
Family Percentage	– 2.18%			

GROUP #3

Insulator	1	0	7	0
Carpenter-Painter	5	0	25	0
Garage	1	0	8	0
Total	7		38	
Family Percentage	–18.4 %			

GROUP #4

Machinist	0	0	8	0
Family Percentage	–0			

GROUP #5

Electrician	1	0	31	0
Instrument and Elect. Repairer	1	0	21	0
Total	2		52	
Family Percentage	– 3.70%			

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION

No. 74-3510

SECTION "I"

BRIAN F. WEBER, Individually and on Behalf of all other persons similarly situated

VERSUS

KAISER ALUMINUM & CHEMICAL CORPORATION

and

UNITED STEELWORKERS OF AMERICA AFL-CIO

JUDGMENT

This cause came on for trial before this Court on plaintiffs' request for a permanent injunction.

After hearing the evidence, the Court took the matter under submission.

Now, therefore, for the written reasons of the Court on file herein, and considering the direction of the Court as to the entry of judgment; accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of plaintiffs, Brian F. Weber, Individually and on behalf of all other persons similarly situated, and against defendants, Kaiser Aluminum & Chemical Corporation and United Steelworkers of America AFL-CIO, granting a permanent injunction restraining defendants from denying plaintiffs, Brian F. Weber and all other members of the class access to on-the-job training programs on the basis of race.

Dated at New Orleans, Louisiana, this day of June, 1976.

/s/ JACK M. GORDON
Jack M. Gordon
United States District Judge

Michael R. Fontham, Esq.
F. W. Middleton, Jr., Esq.
John C. Falkenberry, Esq.
Jerry L. Gardner, Jr., Esq.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

(Title Omitted in Printing)

NOTICE OF APPEAL

Notice is hereby given that Kaiser Aluminum & Chemical Corporation, defendant above-named, hereby appeals to the United States Court of Appeals, Fifth Circuit from the final judgment entered in this action on the 23rd day of June, 1976.

July 9, 1976.

By Attorneys,

Mr. Robert J. Allen, Jr.
Legal Department
Kaiser Aluminum & Chemical Corporation
300 Lakeside Drive
Oakland, California 94604

TAYLOR, PORTER, BROOKS & PHILLIPS

/s/ BY: F. W. MIDDLETON, JR.
F. W. Middleton, Jr., Trial Attorney
P. O. Box 2471
Baton Rouge, Louisiana 70821
504/387-3221, Ext. 24

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

(Title Omitted in Printing)

NOTICE OF APPEAL

Notice is hereby given that defendant, United Steelworkers of America, AFL-CIO, hereby appeals to the United States Court of Appeals for the Fifth Circuit from this Court's order and judgment granting a permanent injunction dated June 21, 1976.

This the 12th day of July, 1976.

COOPER, MITCH & CRAWFORD
409 North 21st Street
Birmingham, Alabama 35203
(205) 328-9576

/s/ By JOHN C. FALKENBERRY
John C. Falkenberry

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 76-3266

(Title Omitted in Printing)

ORDER

IT IS ORDERED that the motion of the United States of America and the Equal Employment Opportunity Commission for leave to intervene as parties appellant and to enlarge the time to and including December 22, 1977 within which intervenors-appellants may file a petition for rehearing and suggestion for rehearing en banc is GRANTED; provided, that the time for filing petition for rehearing and suggestion for rehearing en banc is extended to January 15, 1978, congruent with the enlargement this day granted other parties herein.

/s/ THOMAS GIBBS GEE
United States Circuit Judge